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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(HONORABLE WILLIAM Q. HAYES)

UNITED STATES OF AMERICA,

Plaintiff,

v.

BENJAMIN OCHOA-RAMIREZ,

Defendant.

CASE NO.: 08CR1637-WQH

DATE: July 7, 2008

TIME: 2:00 p.m.

NOTICE OF MOTIONS AND MOTIONS:

- (1) TO COMPEL DISCOVERY;
- (2) PRESERVE AND REWEIGH NARCOTIC EVIDENCE;
- (3) DISMISS THE INDICTMENT DUE TO IMPROPER GRAND JURY INSTRUCTIONS; AND
- (4) FOR LEAVE TO FILE FURTHER MOTIONS

**TO: KAREN P. HEWITT, UNITED STATES ATTORNEY, AND
DAVID D. LESHNER, ASSISTANT UNITED STATES ATTORNEY**

PLEASE TAKE NOTICE that on July 7, 2008, at 2:00 p.m., or as soon thereafter as counsel may be heard, defendant, Benjamin Ochoa-Ramirez, by and through his attorneys, Hanni M. Fakhoury and Federal Defenders of San Diego, Inc., will ask this Court to enter an order granting the following motions.

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MOTIONS

Defendant, Benjamin Ochoa-Ramirez, by and through his attorneys, Hanni M. Fakhoury and Federal Defenders of San Diego, Inc., asks this Court pursuant to the United States Constitution, the Federal Rules of Criminal Procedure, and all other applicable statutes, case law, and local rules for an order to:

- (1) Compel Discovery;
- (2) Preserve and Reweigh Narcotic Evidence;
- (3) Dismiss the Indictment Due to Improper Grand Jury Instructions; and
- (4) Grant Leave to File Further Motions.

These motions are based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, the files and records in the above-captioned matter, and any and all other materials that may come to this Court's attention prior to or during the hearing of these motions.

Respectfully submitted,

Dated: June 23, 2008

s/ Hanni M. Fakhoury
HANNI M. FAKHOURY
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Ochoa-Ramirez

CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of his information and belief, and that a copy of the foregoing document has been served this day upon:

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Assistant United States Attorney
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Dated: June 23, 2008

/s/ Hanni Fakhoury
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UNITED STATES DISTRICT COURT

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Defendant.

CASE NO.: 08CR1637-WQH

STATEMENT OF FACTS AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTIONS

I.

STATEMENT OF FACTS

On May 21, 2008, a two count indictment was handed down by the January 2007 Grand Jury charging Mr. Ochoa-Ramirez with importing 50.58 kilograms of marijuana, in violation of 21 U.S.C. §§ 952, 960 and possession of marijuana with intent to distribute, in violation of 21 U.S.C. § 841(a)(1).

II.

MOTION TO COMPEL DISCOVERY

Mr. Ochoa-Ramirez moves for production of the following discovery. This request is not limited to those items that the prosecutor knows of, but rather includes all discovery listed below that is in the custody, control, care, or knowledge of any “closely related investigative [or other] agencies.” See United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989). Specifically, Mr. Ochoa-Ramirez moves for the production of the following evidence:

1 **1. Mr. Ochoa-Ramirez's Statements.** Mr. Ochoa-Ramirez requests the government disclose any
 2 and all written, recorded and oral statements made by him, as well any written summaries of his oral
 3 statements contained in the handwritten notes of any Government agent. Fed. R. Crim. P. 16(a)(1)(A). The
 4 Advisory Committee Notes and the 1991 amendments to Rule 16 make clear that the Government must
 5 reveal all of Mr. Ochoa-Ramirez's statements, whether written or oral, regardless of whether the
 6 Government intends to make any use of those statements. **Mr. Ochoa-Ramirez specifically requests any**
 7 **audio and videotaped copies of his statements and any rough notes taken pertaining to the substance**
 8 **of his statements. Furthermore, pursuant to Fed. R. Crim. P. 16(a)(1)(B)(i), Mr. Ochoa-Ramirez**
 9 **requests copies of the audio tapes of any taped telephone calls made while he was in custody.**

10 **2. Arrest Reports, Notes and Dispatch Tapes.** Mr. Ochoa-Ramirez also requests that all arrest
 11 reports, notes, dispatch or any other tapes and TECS records that relate to the circumstances surrounding
 12 his arrest or any questioning, be turned over. This request includes, but is not limited to, any rough notes,
 13 records, reports, transcripts or other documents in which statements of Mr. Ochoa-Ramirez or any other
 14 discoverable material is contained. Such material is discoverable under Fed. R. Crim. P. 16(a)(1)(A) and
 15 Brady v. Maryland, 373 U.S. 83 (1963). The Government must produce arrest reports, investigator's notes,
 16 memos from arresting officers, dispatch tapes, sworn statements, and prosecution reports pertaining to Mr.
 17 Ochoa-Ramirez. See Fed. R. Crim. P. 16(a)(1)(B) and (c), Fed. R. Crim. P. 12(I) and 26.2. **Mr. Ochoa-**
 18 **Ramirez includes in this request any redacted portions of the Report of Investigation ("ROI") and**
 19 **any subsequent ROIs that the case agent or any other agent has written.**

20 **3. Brady Material.** Mr. Ochoa-Ramirez requests all documents, statements, agents' reports, and
 21 tangible evidence favorable to Mr. Ochoa-Ramirez on the issue of guilt and/or which affects the credibility
 22 of the Government's witnesses and the Government's case. Under Brady, impeachment as well as
 23 exculpatory evidence falls within the definition of evidence favorable to the accused. United States v.
 24 Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97 (1976). Further, Brady requires the
 25 government disclose any information that may result in a lower sentence under the sentencing guidelines,
 26 notwithstanding its advisory nature, because it is exculpatory and/or mitigating evidence.

27 **4. Mr. Ochoa-Ramirez's Prior Record.** Mr. Ochoa-Ramirez requests disclosure of his prior
 28 criminal record. Fed. R. Crim. P. 16(a)(1)(B). **Specifically, he requests a certified copy of the charging**

documents, plea and sentencing transcripts, and judgment and conviction of any prior conviction used to increase or adjust Mr. Ochoa-Ramirez's sentence under the advisory guidelines.

5. **Any Proposed 404(b) Evidence.** Evidence of prior similar acts is discoverable under Fed. R. Crim. P. 16(a)(1)(c) and Fed. R. Evid. 404(b) and 609. In addition, under Fed. R. Evid. 404(b), "upon request of the accused, the prosecution . . . shall provide reasonable notice in advance of trial . . . of the general nature . . . of any evidence the government proposes to introduce under Fed. R. Evid. 404(b) at trial. Mr. Ochoa-Ramirez requests the government "articulate precisely the evidential hypothesis by which a fact of consequence may be inferred from the other acts evidence." United States v. Mehrmanesh, 689 F.2d 822, 830 (9th Cir. 1982) (emphasis added; internal citations omitted); see also United States v. Brooke, 4 F.3d 1480, 1483 (9th Cir. 1993) (reaffirming Mehrmanesh and reversing convictions). Mr. Ochoa-Ramirez requests **three weeks notice before trial** to give the defense time to adequately investigate and prepare for trial.

6. **Evidence Seized.** Mr. Ochoa-Ramirez requests production of evidence seized as a result of any search, either warrantless or with a warrant. Fed. R. Crim. P. 16(a)(1)(c).

7. **Request for Preservation of Evidence.** Mr. Ochoa-Ramirez specifically requests that all dispatch tapes or any other physical evidence that may be destroyed, lost, or otherwise put out of the possession, custody, or care of the government and which relate to the arrest or the events leading to the arrest in this case be preserved. This request includes, but is not limited to, any samples of narcotics used to run any scientific tests, all narcotics, the results of any fingerprint analysis, the vehicle involved in the case, the defendant's personal effects, and any evidence seized from the defendant or any third party. This request also includes any material or percipient witnesses who might be deported or otherwise likely to become unavailable (e.g. undocumented aliens and transients). It is requested that the prosecutor be ordered to question all the agencies and individuals involved in the prosecution and investigation of this case to determine if such evidence exists, and if it does exist, to inform those parties to preserve any such evidence.

8. **Tangible Objects.** Mr. Ochoa-Ramirez requests the opportunity to inspect, copy, and test, as necessary, all other documents and tangible objects, including photographs, books, papers, documents, fingerprint analyses, or copies of portions thereof, which are material to the defense, intended for use in the Government's case-in-chief, or were obtained from or belong to Mr. Ochoa-Ramirez. Fed. R. Crim. P.

1 16(a)(1)(c). **Specifically, Mr. Ochoa-Ramirez requests color copies of all photographs in this case in**
2 **the Government's possession.**

3 9. **TECS Reports.** Defendant requests all TECS reports, including reports pertaining to all vehicle
4 border crossings pertaining to the vehicle used in this case and any vehicles pertaining to Mr. Ochoa-
5 Ramirez.

6 10. **Opportunity to Weigh, View and Photograph the Contraband.** Mr. Ochoa-Ramirez hereby
7 requests an opportunity to view, photograph, and weigh the contraband allegedly confiscated in this case.

8 11. **DEA 7 Form.** Mr. Ochoa-Ramirez requests a copy of the DEA 7 form that should indicate the
9 alleged weight and purity of the contraband in this case.

10 12. **Narcotics Detector Dog Information.** Mr. Ochoa-Ramirez moves for production of all
11 discoverable information about any Narcotics Detector Dogs (NDDs) used in this case, including
12 information regarding: (a) the qualifications of the NDDs and their handlers, (b) the training and experience
13 of the NDDs and their handlers, (c) the government's procedures regarding the treatment, training and
14 rewarding of the NDDs, (d) a detailed description of the exact method the NDDs in this case used to indicate
15 an "alert" to contraband, and (e) the location of the NDD and the vehicle when the NDD alerted, and (f) the
16 NDD's reliability.

17 13. **Expert Witnesses.** Mr. Ochoa-Ramirez requests the name, qualifications, and a written
18 summary of the testimony of any person that the Government intends to call as an expert witness during its
19 case in chief. Fed. R. Crim. P. 16(a)(1)(E). The defense requests the notice of expert testimony be provided
20 a minimum of **three weeks prior to trial** so the defense can properly prepare to address and respond to this
21 testimony, including obtaining its own expert and/or investigating the opinions, credentials of the
22 Government's expert and a hearing in advance of trial to determine the admissibility of qualifications of any
23 expert. See Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 152 (1999) (trial judge is "gatekeeper" and
24 must determine, reliability and relevancy of expert testimony and such determinations may require "special
25 briefing or other proceedings").

26 14. **Scientific and Other Information.** Mr. Ochoa-Ramirez requests the results of any scientific
27 or other tests or examinations conducted by any Government agency or their subcontractors in connection
28 with this case. See Fed. R. Crim. P. 16(a)(1)(D).

1 15. **Henthorn Material.** Mr. Ochoa-Ramirez requests that the Assistant United States Attorney
2 (“AUSA”) assigned to this case oversee (not personally conduct) a review of all personnel files of each agent
3 involved in the present case for impeachment material. See Kyles v. Whitley, 514 U.S. 419 (1995) (holding
4 that “the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on
5 the Government’s behalf in the case, including the police”); United States v. Henthorn, 931 F.2d 29 (9th Cir.
6 1991); United States v. Jennings, 960 F.2d 1488 (9th Cir. 1992) (AUSA may not be ordered to personally
7 conduct examination of records; appropriate Government agency may review files and notify AUSA of
8 contents as long as AUSA makes the determination regarding material to be disclosed); United States v.
9 Herring, 83 F.3d 1120 (9th Cir. 1996) (accord).

10 16. **Evidence of Bias or Motive to Lie.** Mr. Ochoa-Ramirez requests any evidence that any
11 prospective Government witness is biased or prejudiced against Mr. Ochoa-Ramirez, or has a motive to
12 falsify or distort his or her testimony.

13 17. **Impeachment Evidence.** Mr. Ochoa-Ramirez requests any evidence that any prospective
14 Government witness has engaged in any criminal act whether or not resulting in a conviction and whether
15 any witness has made a statement favorable to Mr. Ochoa-Ramirez. See Fed. R. Evid. 608, 609 and 613;
16 Brady v. Maryland, 373 U.S. 83 (1963).

17 18. **Evidence of Criminal Investigation of Any Government Witness.** Mr. Ochoa-Ramirez
18 requests any evidence that any prospective witness is under investigation by federal, state or local authorities
19 for any criminal conduct.

20 19. **Evidence Affecting Perception, Recollection, Ability to Communicate, or Truth Telling.**
21 Mr. Ochoa-Ramirez requests any evidence, including any medical or psychiatric report or evaluation, that
22 tends to show that any prospective witness’ ability to perceive, remember, communicate, or tell the truth is
23 impaired, and any evidence that a witness has ever used narcotics or other controlled substances, or has ever
24 been an alcoholic.

25 20. **Witness Addresses.** Mr. Ochoa-Ramirez requests the name and last known address of each
26 prospective Government witness. Mr. Ochoa-Ramirez also requests the name and last known address of
27 every witness to the crime or crimes charged (or any of the overt acts committed in furtherance thereof) who
28 will not be called as a Government witness.

1 21. **Name of Witnesses Favorable to Mr. Ochoa-Ramirez.** Mr. Ochoa-Ramirez requests the name
2 of any witness who made an arguably favorable statement concerning Mr. Ochoa-Ramirez or who could not
3 identify him or who was unsure of his identity, or participation in the crime charged.

4 22. **Statements Relevant to the Defense.** Mr. Ochoa-Ramirez requests disclosure of any statement
5 relevant to any possible defense or contention that he might assert in his defense.

6 23. **Giglio Information & Agreements Between the Government and Witnesses.** Pursuant to
7 Giglio v. United States, 405 U.S. 150 (1972), Mr. Ochoa-Ramirez requests all statements and/or promises,
8 express or implied, made to any witness, in exchange for their testimony in this case, and all other
9 information which could be used for impeachment. Mr. Ochoa-Ramirez also requests discovery regarding
10 any other express or implicit promise, understanding, offer of immunity, of past, present, or future
11 compensation, or any other kind of agreement, promise, or understanding, including any implicit
12 understanding relating to criminal or civil income tax, forfeiture or fine liability, between any prospective
13 Government witness and the Government (federal, state and/or local). This request also includes any
14 discussion with a potential witness about or advice concerning any contemplated prosecution, or any
15 possible plea bargain, even if no bargain was made, or the advice not followed, and specifically includes any
16 discussion with a potential witness regarding that witness' immigration status and/or any affect that the
17 witness' statements or lack thereof might have on that status, including the granting or revoking of such
18 immigration status or any other immigration status, including but not limited to citizenship, nationality, a
19 green card, border crossing card, parole letter, or permission to remain in the United States.

20 24. **Informants and Cooperating Witnesses.** Mr. Ochoa-Ramirez requests disclosure of the names
21 and addresses of all informants or cooperating witnesses used or to be used in this case, and in particular,
22 disclosure of any informant who was a percipient witness in this case or otherwise participated in the crime
23 charged against Mr. Ochoa-Ramirez. The Government must disclose the informant's identity and location,
24 as well as the existence of any other percipient witness unknown or unknowable to the defense. Roviaro
25 v. United States, 353 U.S. 53, 61-62 (1957). The Government must disclose any information derived from
26 informants which exculpates or tends to exculpate Mr. Ochoa-Ramirez. Brady v. Maryland, 373 U.S. 83
27 (1963).

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IV.

THE INDICTMENT SHOULD BE DISMISSED BECAUSE JUDGE BURNS'S INSTRUCTIONS AS A WHOLE PROVIDED TO THE JANUARY 2007 GRAND JURY RUN AFOUL OF BOTH NAVARRO-VARGAS AND WILLIAMS AND VIOLATE THE FIFTH AMENDMENT BY DEPRIVING MR. OCHOA-RAMIREZ OF THE TRADITIONAL FUNCTIONING OF THE GRAND JURY

A. Introduction.

The indictment in the instant case was returned by the January 2007 grand jury. See CR at 6.¹ That grand jury was instructed by Judge Burns on January 11, 2007. See Reporter's Partial Transcript of the Proceedings, dated January 11, 2007, a copy of which is attached hereto as Exhibit A. Judge Burns's instructions to the impaneled grand jury deviate from the instructions at issue in the major Ninth Circuit cases challenging a form grand jury instruction previously given in this district in several ways.² These instructions compounded Judge Burns's erroneous instructions and comments to prospective grand jurors during voir dire of the grand jury panel, which immediately preceded the instructions at Ex. A. See Reporter's Transcript of Proceedings, dated January 11, 2007, a copy of which is attached hereto as Exhibit

B.³

1. Judge Burns Instructed Grand Jurors That Their Singular Duty Is to Determine Whether or Not Probable Cause Exists and That They Have No Right to Decline to Indict When the Probable Cause Standard Is Satisfied.

After repeatedly emphasizing to the grand jurors that probable cause determination was their sole responsibility, see Ex. A at 3, 3-4, 5,⁴ Judge Burns instructed the grand jurors that they were forbidden "from judg[ing] the wisdom of the criminal laws enacted by Congress; that is, whether or not there should be a federal law or should not be a federal law designating certain activity [as] criminal is not up to you." See

¹ "CR" refers to the Clerk's Record in Case Number 07CR2364-LAB.

² See, e.g., United States v. Cortez-Rivera, 454 F.3d 1038 (9th Cir. 2006); United States v. Navarro-Vargas, 408 F.3d 1184 (9th Cir.) (en banc), cert. denied, 126 S. Ct. 736 (2005) (Navarro-Vargas II); United States v. Navarro-Vargas, 367 F.3d 896 (9th Cir. 2004) (Navarro-Vargas I); United States v. Marcucci, 299 F.3d 1156 (9th Cir. 2002) (per curiam).

³ The transcript of the voir dire indicates that grand jurors were shown a video presentation on the role of the grand jury. Mr. Fernandez-Serrano requests that the video presentation be produced. See United States v. Alter, 482 F.2d 1016, 1029 n.21 (9th Cir. 1973) ("[t]he proceedings before the grand jury are secret, but the ground rules by which the grand jury conducts those proceedings are not.").

⁴ See also id. at 20 ("You're all about probable cause.").

1 id. at 8. The instructions go beyond that, however, and tell the grand jurors that, should “you disagree with
2 that judgment made by Congress, then your option is not to say ‘well, I’m going to vote against indicting
3 even though I think that the evidence is sufficient’ or ‘I’m going to vote in favor of even though the evidence
4 may be insufficient.’” See id. at 8-9. Thus, the instruction flatly bars the grand jury from declining to indict
5 because the grand jurors disagree with a proposed prosecution.

6 Immediately before limiting the grand jurors’ powers in the way just described, Judge Burns referred
7 to an instance in the grand juror selection process in which it excused three potential jurors. See id. at 8.

8 I’ve gone over this with a couple of people. You understood from the questions and answers
9 that a couple of people were excused, I think three in this case, because they could not adhere
to the principle that I’m about to tell you.

10 Id. That “principle” was Judge Burns’s discussion of the grand jurors’ inability to give effect to their
11 disagreement with Congress. See id. at 8-9. Thus, the Court not only instructed the grand jurors on its view
12 of their discretion; it enforced that view on pain of being excused from service as a grand juror.

13 Examination of the recently disclosed voir dire transcript, which contains additional instructions and
14 commentary in the form of the give and take between Judge Burns and various prospective grand jurors,
15 reveals how Judge Burns’s emphasis of the singular duty is to determine whether or not probable cause
16 exists and his statement that grand jurors they cannot judge the wisdom of the criminal laws enacted by
17 Congress merely compounded an erroneous series of instructions already given to the grand jury venire. In
18 one of his earliest substantive remarks, Judge Burns makes clear that the grand jury’s sole function is
19 probable cause determination.

20 [T]he grand jury is determining really two factors: “do we have a reasonable belief that a
21 crime was committed? And second, do we have a reasonable belief that the person that they
propose that we indict committed the crime?”

22 If the answer is “yes” to both of those, then the case should move forward. If the answer to
23 either of the questions is “no,” then the grand jury should not hesitate and not indict.

24 See Ex. B at 8. In this passage, Judge Burns twice uses the term “should” in a context makes clear that the
25 term is employed to convey instruction: “should” cannot reasonably be read to mean optional when it
26 addresses the obligation not to indict when the grand jury has no “reasonable belief that a crime was
27 committed” or if it has no “reasonable belief that the person that they propose that we indict committed the
28 crime.”

Equally revealing is Judge Burns's interactions with two potential grand jurors who indicated that, in some unknown set of circumstances, they might decline to indict even where there was probable cause. Because of the redactions of the grand jurors' names, Mr. Ochoa-Ramirez will refer to them by occupation. One is a retired clinical social worker (hereinafter CSW), and the other is a real estate agent (hereinafter REA). The CSW indicated a view that no drugs should be considered illegal and that some drug prosecutions were not an effective use of resources. See id. at 16. The CSW was also troubled by certain unspecified immigration cases. See id.

Judge Burns made no effort to determine what sorts of drug and immigration cases troubled the CSW. He never inquired as to whether the CSW was at all troubled by the sorts of cases actually filed in this district, such as drug smuggling cases and cases involving reentry after deportation and alien smuggling. Rather, Judge Burns provided instructions suggesting that, in any event, any scruples CSW may have possessed were simply not capable of expression in the context of grand jury service.

Now, the question is can you fairly evaluate [drug cases and immigration cases]? Just as the defendant is ultimately entitled to a fair trial and the person that's accused is entitled to a fair appraisal of the evidence of the case that's in front of you, so, too, is the United States entitled to a fair judgment. If there's probable cause, then the case should go forward. *I wouldn't want you to say*, "well, yeah, there's probable cause, but I still don't like what our government is doing. I disagree with these laws, so I'm not going to vote for it to go forward." If that is your frame of mind, the probably you shouldn't serve. Only you can tell me that.

See id. at 16-17 (emphasis added). Thus, without any sort of context whatsoever, Judge Burns let the grand juror know that it would not want him or her to decline to indict in an individual case where the grand juror "[didn't] like what our government is doing," see id. at 17, but in which there was probable cause. See Id. Such a case "should go forward." See id. Given that blanket proscription on grand juror discretion, made manifest by Judge Burns's use of the pronoun "I", the CSW indicated that it "would be difficult to support a charge even if [the CSW] thought the evidence warranted it." See id. Again, Judge Burns's question provided no context; it inquired regarding "a case," a term presumably just as applicable to possession of a small amount of medical marijuana as kilogram quantities of methamphetamine for distribution. Any grand juror listening to this exchange could only conclude that there was *no* case in which Judge Burns would permit them to vote "no bill" in the face of a showing probable cause.

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1 Just in case there may have been a grand juror that did not understand his or her inability to exercise
 2 anything like prosecutorial discretion, Judge Burns drove the point home in his exchange with REA. REA
 3 first advised Judge Burns of a concern regarding the “disparity between state and federal law” regarding
 4 “medical marijuana.” See id. at 24. Judge Burns first sought to address REA’s concerns about medical
 5 marijuana by stating that grand jurors, like trial jurors, are simply forbidden from taking penalty
 6 considerations into account.

7 Well, those things -- the consequences of your determination shouldn’t concern you in the
 8 sense that penalties or punishment, things like that -- we tell trial jurors, of course, that
 9 they cannot consider the punishment or the consequence that Congress has set for these
 things. We’d ask you to also abide by that. We want you to make a business-like
 decision of whether there was a probable cause. . . .

10 Id. at 24-25. Having stated that REA was to “abide” by the instruction given to trial jurors, Judge Burns
 11 went on to suggest that REA recuse him or herself from medical marijuana cases. See id. at 25.

12 In response to further questioning, REA disclosed REA’s belief “that drugs should be legal.” See id.
 13 That disclosure prompted Judge Burns to begin a discussion that ultimately led to an instruction that a grand
 14 juror is obligated to vote to indict if there is probable cause.

15 I can tell you sometimes I don’t agree with some of the legal decisions that are indicated that
 16 I have to make. But my alternative is to vote for someone different, vote for someone that
 17 supports the policies I support and get the law changed. It’s not for me to say, “well, I don’t
 like it. So I’m not going to follow it here.”

18 You’d have a similar obligation as a grand juror even though you might have to grit your
 19 teeth on some cases. Philosophically, if you were a member of congress, you’d vote against,
 for example, criminalizing marijuana. I don’t know if that’s it, but you’d vote against
 criminalizing some drugs.

20 That’s not what your prerogative is here. You’re prerogative instead is to act like a judge and
 21 say, “all right. This is what I’ve to deal with objectively. Does it seem to me that a crime
 was committed? Yes. Does it seem to me that this person’s involved? It does.” *And then*
 22 *your obligation, if you find those to be true, would be to vote in favor of the case going*
forward.

23 Id. at 26-27 (emphasis added). Thus, the grand juror’s duty is to conduct a simple two part test, which, if
 24 both questions are answered in the affirmative, lead to an “obligation” to indict.

25 Having set forth the duty to indict, and being advised that REA was “uncomfortable” with that
 26 paradigm, Judge Burns then set about to ensure that there was no chance of a deviation from the obligation
 27 to indict in every case in which there was probable cause.

28 //

1 The Court: Do you think you'd be inclined to let people go in drug cases even though you
were convinced there was probable cause they committed a drug offense?

2 REA: It would depend on the case.

The Court: Is there a chance that you would do that?

3 REA: Yes.

The Court: I appreciate your answers. I'll excuse you at this time.

4
5 Id. at 27. Two aspects of this exchange are crucial. First, REA plainly does not intend to act solely on his
6 political belief in decriminalization -- whether he or she would indict "depend[s] on the case," see id., as it
7 should. Because REA's vote "depend[s] on the case," see id., it is necessarily true that REA would vote to
8 indict in some (perhaps many or even nearly all) cases in which there was probable cause. Again, Judge
9 Burns made no effort to explore REA's views; it did not ascertain what sorts of cases would prompt REA
10 to hesitate. The message is clear: it does not matter what type of case might prompt REA's reluctance to
11 indict because, once the two part test is satisfied, the "obligation" is "to vote in favor of the case going
12 forward."⁵ See id. at 27. That is why even the "chance," see id., that a grand juror might not vote to indict
13 was too great a risk to run.

14 **2. The Instructions Posit a Non-Existent Prosecutorial Duty to Offer** 15 **Exculpatory Evidence.**

16 In addition to his instructions on the authority to choose not to indict, Judge Burns also assured the
17 grand jurors that prosecutors would present to them evidence that tended to undercut probable cause. See
18 Ex. A at 20.⁶

19
20 ⁵ This point is underscored by Judge Burns's explanation to the Grand Jury that a magistrate judge
21 will have determined the existence of probable cause "in most circumstances" before it has been presented
22 with any evidence. See Ex. A at 6. This instruction created an imprimatur of finding probable cause in each
23 case because had a magistrate judge not so found, the case likely would not have been presented to the Grand
Jury for indictment at all. The Grand Jury was informed that it merely was redundant to the magistrate court
"in most circumstances." See id. This instruction made the grand jury more inclined to indict irrespective
of the evidence presented.

24 ⁶ These instructions were provided in the midst of several comments that praised the United States
25 attorney's office and prosecutors in general. Judge Burns advised the grand jurors that they "can expect that
26 the U.S. Attorneys that will appear in from of [them] will be candid, they'll be honest, and . . . they'll act
in good faith in all matters presented to you." See Ex. A at 27. The instructions delivered during voir dire
go even further. In addressing a prospective grand juror who revealed "a strong bias for the U.S. Attorney,
27 whatever cases they might bring," see Ex. B at 38, Judge Burns affirmatively endorsed the prospective
juror's view of the U.S. Attorney's office, even while purporting to discourage it: "frankly, I agree with the
28 things you are saying. They make sense to me." See id. at 43. See also id. at 40 ("You were saying that you

Now, again, this emphasizes the difference between the function of the grand jury and the trial jury. You're all about probable cause. If you think that there's evidence out there that might cause you to say "well, I don't think probable cause exists," then it's incumbent upon you to hear that evidence as well. As I told you, in most instances, *the U.S. Attorneys are duty-bound to present evidence that cuts against what they may be asking you to do if they're aware of that evidence.*

Id. (emphasis added).

The antecedent to this instruction is also found in the voir dire. After advising the grand jurors that "the presentation of evidence to the grand jury is necessarily one-sided," see Ex. B at 14, Judge Burns gratuitously added that "[his] experience is that the prosecutors don't play hide-the-ball. If there's something adverse or that cuts against the charge, you'll be informed of that. They have a duty to do that." See id. Thus, Judge Burns unequivocally advised the grand jurors that the government would present any evidence that was "adverse" or "that cuts against the charge." See id.

B. Navarro-Vargas Establishes Limits on the Ability of Judges to Constrain the Powers of the Grand Jury, Which Judge Burns Far Exceeded in His Instructions as a Whole During Impanelment.

The Ninth Circuit has, over vigorous dissents, rejected challenges to various instructions given to grand jurors in the Southern District of California. See Navarro-Vargas II, 408 F.3d 1184. While the Ninth Circuit has thus far (narrowly) rejected such challenges, it has, in the course of adopting a highly formalistic

give a presumption of good faith to the U.S. Attorney and assume, quite logically, that they're not about the business of trying to indict innocent people or people that they believe to be innocent or the evidence doesn't substantiate the charges against.").

Judge Burns's discussion of his once having been a prosecutor before the Grand Jury compounded the error inherent in his praising of the government attorneys. See Ex. A at 9-10. Judge Burns's instructions implied that as a prior prosecutor and current "jury liaison judge," see id. at 8, Judge Burns would not allow the government attorneys to act inappropriately or to present cases for indictment where no probable cause existed.

In addition, while Judge Burns instructed the Grand Jury that it had the power to question witnesses, Judge Burns's instructions also told the Grand Jury that it should "be deferential to the U.S. Attorney if there is an instance where the U.S. Attorney thinks a question ought not to be asked." See Ex. A at 12. As the dissent in Navarro-Vargas pointed out, "the grand jury's independence is diluted by [such an] instruction, which encourages deference to prosecutors." Navarro-Vargas, 408 F.3d at 1215. The judge's admonition that his statement was only "advice," see Ex. A at 12, does not cure the error as courts regularly presume grand jurors follow instructions provided to them by the court. See id. at 1202, n.23 ("We must presume that grand jurors will follow instructions because, in fact, we are prohibited from examining jurors to verify whether they understood the instruction as given and then followed it.").

1 approach⁷ to the problems posed by the instructions, endorsed many of the substantive arguments raised by
 2 the defendants in those cases. The district court's instructions cannot be reconciled with the role of the
 3 grand jury as set forth in Navarro-Vargas II. Taken together, the voir dire of and instructions given to the
 4 January 2007 Grand Jury, go far beyond those at issue in Navarro-Vargas, taking a giant leap in the direction
 5 of a bureaucratic, deferential grand jury, focused solely upon probable cause determinations and utterly
 6 unable to exercise any quasi-prosecutorial discretion. That is not the institution the Framers envisioned.
 7 See United States v. Williams, 504 U.S. 36, 49 (1992).

8 For instance, with respect to the grand jury's relationship with the prosecution, the Navarro-Vargas
 9 II majority acknowledges that the two institutions perform similar functions: "the public prosecutor, in
 10 deciding whether a particular prosecution shall be instituted or followed up, performs much the same
 11 function as a grand jury." Navarro-Vargas II, 408 F.3d at 1200 (quoting Butz v. Economou, 438 U.S. 478,
 12 510 (1978)). Accord United States v. Navarro-Vargas, 367 F.3d 896, 900 (9th Cir. 2004) (Navarro-Vargas
 13 I)(Kozinski, J., dissenting) (The grand jury's discretion in this regard "is most accurately described as
 14 prosecutorial."). See also Navarro-Vargas II, 408 F.3d at 1213 (Hawkins, J., dissenting). It recognizes that
 15 the prosecutor is not obligated to proceed on any indictment or presentment returned by a grand jury, id.,
 16 but also that "the grand jury has no obligation to prepare a presentment or to return an indictment drafted
 17 by the prosecutor." Id. See Niki Kuckes, The Democratic Prosecutor: Explaining the Constitutional
 18 Function of the Federal Grand Jury, 94 Geo. L.J. 1265, 1302 (2006) (the grand jury's discretion not to indict
 19 was "'arguably . . . the most important attribute of grand jury review from the perspective of those who
 20 insisted that a grand jury clause be included in the Bill of Rights'" (quoting Wayne LaFave et al., Criminal
 21 Procedure § 15.2(g) (2d ed. 1999)).

22 Indeed, the Navarro-Vargas II majority agrees that the grand jury possesses all the attributes set forth
 23 in Vasquez v. Hillery, 474 U.S. 254 (1986). See id.

24 The grand jury thus determines not only whether probable cause exists, but also whether to
 25 "charge a greater offense or a lesser offense; numerous counts or a single count; and perhaps

26 ⁷ See Navarro-Vargas II, 408 F.3d at 1210-11 (Hawkins, J., dissenting) (criticizing the majority
 27 because "[t]he instruction's use of the word 'should' is most likely to be understood as imposing an
 28 inflexible 'duty or obligation' on grand jurors, and thus to circumscribe the grand jury's constitutional
 independence.").

1 most significant of all, a capital offense or a non-capital offense -- all on the basis of the
 2 same facts. And, significantly, the grand jury may refuse to return an indictment even
 3 “where a conviction can be obtained.”

4 Id. (quoting Vasquez, 474 U.S. at 263). The Supreme Court has itself reaffirmed Vasquez’s description of
 5 the grand jury’s attributes in Campbell v. Louisiana, 523 U.S. 392 (1998), noting that the grand jury
 6 “controls not only the initial decision to indict, but also significant questions such as how many counts to
 7 charge and whether to charge a greater or lesser offense, including the important decision whether to charge
 8 a capital crime.” Id. at 399 (citing Vasquez, 474 U.S. at 263). Judge Hawkins notes that the Navarro-Vargas
 9 II majority accepts the major premise of Vasquez: “the majority agrees that a grand jury has the power to
 10 refuse to indict someone even when the prosecutor has established probable cause that this individual has
 11 committed a crime.” See id. at 1214 (Hawkins, J. dissenting). Accord Navarro-Vargas I, 367 F.3d at 899
 12 (Kozinski, J., dissenting); United States v. Marcucci, 299 F.3d 1156, 1166-73 (9th Cir. 2002) (per curiam)
 13 (Hawkins, J., dissenting). In short, the grand jurors’ prerogative not to indict enjoys strong support in the
 14 Ninth Circuit. But not in Judge Burns’s instructions.

15 **C. Judge Burns’s Instructions Forbid the Exercise of Grand Jury Discretion Established
 16 in Both Vasquez and Navarro-Vargas II.**

17 The Navarro-Vargas II majority found that the instruction in that case “leave[s] room for the grand
 18 jury to dismiss even if it finds probable cause,” 408 F.3d at 1205, adopting the analysis in its previous
 19 decision in Marcucci. Marcucci reasoned that the instructions do not mandate that grand jurors indict upon
 20 every finding of probable cause because the term “should” may mean “what is probable or expected.” 299
 21 F.3d at 1164 (citation omitted). That reading of the term “should” makes no sense in context, as Judge
 22 Hawkins ably pointed out. See Navarro-Vargas II, 408 F.3d at 1210-11 (Hawkins, J., dissenting) (“The
 23 instruction’s use of the word ‘should’ is most likely to be understood as imposing an inflexible ‘duty or
 24 obligation’ on grand jurors, and thus to circumscribe the grand jury’s constitutional independence.”). See
 25 also id. (“The ‘word’ should is used to express a duty [or] obligation.”) (quoting The Oxford American
 26 Diction and Language Guide 1579 (1999) (brackets in original)).

27 The debate about what the word “should” means is irrelevant here; the instructions here make no
 28 such fine distinction. The grand jury instructions make it painfully clear that grand jurors simply may not

1 choose not to indict in the event of what appears to them to be an unfair application of the law: should “you
 2 disagree with that judgment made by Congress, then your option is not to say ‘well, I’m going to vote against
 3 indicting even though I think that the evidence is sufficient’” See Ex. A at 8-9. Thus, the instruction
 4 flatly bars the grand jury from declining to indict because they disagree with a proposed prosecution. No
 5 grand juror would read this language as instructing, or even allowing, him or her to assess “the need to
 6 indict.” Vasquez, 474 U.S. at 264.

7 While Judge Burns used the word “should” instead of “shall” during voir dire with respect to whether
 8 an indictment was required if probable cause existed, see Ex. B at 4, 8, in context, it is clear that Judge Burns
 9 could only mean “should” in the obligatory sense. For example, when addressing a prospective juror, Judge
 10 Burns not only told the jurors that they “should” indict if there is probable cause, it told them that if there
 11 is not probable cause, “then the grand jury should hesitate and not indict.” See id. at 8. At least in context,
 12 it would strain credulity to suggest that Judge Burns was using “should” for the purpose of “leaving room
 13 for the grand jury to [indict] even if it finds [no] probable cause.” See Navarro-Vargas, 408 F.3d at 1205.
 14 Clearly Judge Burns was not.

15 The full passage cited above effectively eliminates any possibility that Judge Burns intended the
 16 Navarro-Vargas spin on the word “should.”

17 [T]he grand jury is determining really two factors: “do we have a reasonable belief that a
 18 crime was committed? And second, do we have a reasonable belief that the person that they
 propose that we indict committed the crime?”

19 If the answer is “yes” to both of those, then the case should move forward. If the answer to
 20 either of the questions is “no,” then the grand jury should not hesitate and not indict.

21 See Ex. B at 8. Of the two sentences containing the word “should,” the latter of the two essentially states
 22 that if there is no probable cause, you *should* not indict. Judge Burns could not possibly have intended to
 23 “leav[e] room for the grand jury to [indict] even if it finds [no] probable cause.” See Navarro-Vargas, 408
 24 F.3d at 1205 (citing Marcucci, 299 F.3d at 1159). That would contravene the grand jury’s historic role of
 25 protecting the innocent. See, e.g., United States v. Calandra, 414 U.S. 338, 343 (1974) (The grand jury’s
 26 “responsibilities continue to include both the determination whether there is probable cause and the
 27 protection of citizens against unfounded criminal prosecutions.”) (citation omitted).

28 By the same token, if Judge Burns said that “the case should move forward” if there is probable

cause, but intended to “leav[e] room for the grand jury to dismiss even if it finds probable cause,” see Navarro-Vargas, 408 F.3d at 1205 (citing Marcucci, 299 F.3d at 1159), then Judge Burns would have to have intended two different meanings of the word “should” in the space of two consecutive sentences. That could not have been his intent. But even if it were, no grand jury could ever have had that understanding.⁸ Jurors are not presumed to be capable of sorting through internally contradictory instructions. See generally United States v. Lewis, 67 F.3d 225, 234 (9th Cir. 1995) (“where two instructions conflict, a reviewing court cannot presume that the jury followed the correct one”) (citation, internal quotations and brackets omitted).

Lest there be any room for ambiguity, on no less than four occasions, Judge Burns made it explicitly clear to the grand jurors that “should” was not merely suggestive, but obligatory:

(1) The first occasion occurred in the following exchange when Judge Burns conducted voir dire and excused a potential juror (CSW):

The Court: . . . If there’s probable cause, then the case should go forward. I wouldn’t want you to say, “Well, yeah, there’s probable cause. But I still don’t like what the government is doing. I disagree with these laws, so I’m not going to vote for it to go forward.” If that’s your frame of mind, then probably you shouldn’t serve. Only you can tell me that.

Prospective Juror: Well, I think I may fall in that category.

The Court: In the latter category?

Prospective Juror: Yes.

The Court: Where it would be difficult for you to support a charge even if you thought the evidence warranted it?

Prospective Juror: Yes.

The Court: I’m going to excuse you then.

See Ex. B at 17. There was nothing ambiguous about the word “should” in this exchange with a prospective juror. Even if the prospective juror did not like what the government was doing in a particular case, that case “should go forward” and Judge Burns expressly disapproved of any vote that might prevent that. See id. (“I wouldn’t want you [to vote against such a case]”). The sanction for the possibility of independent judgment was dismissal, a result that provided full deterrence of that juror’s discretion and secondary deterrence as to the exercise of discretion by any other prospective grand juror.

(2) In an even more explicit example of what “should” meant, Judge Burns makes clear that it

⁸ This argument does not turn on Mr. Ochoa-Ramirez’ view that the Navarro-Vargas/Marcucci reading of the word “should” in the model instructions is wildly implausible. Rather, it turns on the context in which the word is employed by Judge Burns in his unique instructions, context which eliminates the Navarro-Vargas/Marcucci reading as a possibility.

1 there is an unbending obligation to indict if there is probable cause. Grand jurors have no other prerogative.
 2 Court . . . It's not for me to say, "Well, I don't like it. So I'm not going to follow it here."

3 You'd have a similar *obligation* as a grand juror even though you might have to grit your
 4 teeth on some cases. Philosophically, if you were a member of Congress, you'd vote against,
 5 for example, criminalizing marijuana. I don't know if that's it, but you'd vote against
 6 criminalizing some drugs.

7 That's not what your *prerogative* is here. Your prerogative instead is act like a judge and to
 8 say, "All right. This is what I've got to deal with objectively. Does it seem to me that a
 9 crime was committed? Yes. Does it seem to me that this person's involved? It does." *And*
 10 *then your obligation, if you find those things to be true, would be to vote in favor of the case*
 11 *going forward.*

12 Id. at 26-27 (emphasis added). After telling this potential juror (REA) what his obligations and prerogatives
 13 were, the Court inquired as to whether "you'd be inclined to let people go on drug cases even though you
 14 were convinced there was probable cause they committed a drug offense?" Id. at 27. The potential juror
 15 responded: "It would depend on the case." Id. Nevertheless, that juror was excused. Id. at 28. Again, in
 16 this context, and contrary to the situation in Navarro-Vargas, "should" means "shall"; it is obligatory, and
 17 the juror has no prerogative to do anything other than indict if there is probable cause.

18 Moreover, as this example demonstrates, the issue is not limited to whether the grand jury believes
 19 a particular law to be "unwise." This juror said that any decision to indict would not depend on the law, but
 20 rather it would "depend on the case." Thus, it is clear that Judge Burns's point was that if a juror could not
 21 indict on probable cause for *every* case, then that juror was not fit for service. It is equally clear that the
 22 prospective juror did not dispute the "wisdom of the law;" he was prepared to indict under some factual
 23 scenarios, perhaps many. But Judge Burns did not pursue the question of what factual scenarios troubled
 24 the prospective jurors, because his message is that there is no discretion not to indict.

25 (3) As if the preceding examples were not enough, Judge Burns continued to pound the point
 26 home that "should" meant "shall" when it told another grand juror during voir dire: "[W]hat I have to insist
 27 on is that you follow the law that's given to us by the United States Congress. We enforce the federal laws
 28 here." See id. at 61.

(4) And then again, after swearing in all the grand jurors who had already agreed to indict in
 every case where there was probable cause, Judge Burns reiterated that "should" means "shall" when it
 reminded them that "your option is not to say 'well, I'm going to vote against indicting even though I think

1 that the evidence is sufficient Instead your *obligation* is . . . not to bring your personal definition of
 2 what the law ought to be and try to impose that through applying it in a grand jury setting.” See Ex. A at 9.

3 Moreover, Judge Burns advised the grand jurors that the were forbidden from considering the
 4 penalties to which indicted persons may be subject.

5 Prospective Juror (REA): ... And as far as being fair, it kind of depends on what the case is
 about because there is a disparity between state and federal law.

6 The Court: In what regard?

Prospective Juror: Specifically, medical marijuana.

7 The Court: Well, those things -- the consequences of your determination shouldn’t concern
 you in the sense that penalties or punishment, things like that -- *we tell trial jurors, of course,*
 8 *that they cannot consider the punishment or the consequence that Congress has set for these*
 9 *things. We’d ask you to also abide by that. We want you to make a business-like decision*
 of whether there was a probable cause. ...

10 See Ex. B at 24-25 (emphasis added). A “business-like decision of whether there was a probable cause”
 11 would obviously leave no role for the consideration of penalty information.

12 The Ninth Circuit previously rejected a claim based upon the proscription against consideration of
 13 penalty information based upon the same unlikely reading of the word “should” employed in Marcucci. See
 14 United States v. Cortez-Rivera, 454 F.3d 1038, 1040-41 (9th Cir. 2006). Cortez-Rivera is inapposite for two
 15 reasons. First, Judge Burns did not use the term “should” in the passage quoted above. Second, that context,
 16 as well as his consistent use of a mandatory meaning in employing the term, eliminate the ambiguity (if there
 17 ever was any) relied upon by Cortez-Rivera. The instructions again violate Vasquez, which plainly
 18 authorized consideration of penalty information. See 474 U.S. at 263.

19 Noting can mask the undeniable fact that Judge Burns explicitly instructed the jurors time and time
 20 again that they had a duty, an obligation, and a singular prerogative to indict each and every case where there
 21 was probable cause. These instructions go far beyond the holding of Navarro-Vargas and stand in direct
 22 contradiction of the Supreme Court’s decision in Vasquez. Indeed, it defies credulity to suggest that a grand
 23 juror hearing these instructions, and that voir dire, could possibly believe what the Supreme Court held in
 24 Vasquez:

25 The grand jury does not determine only that probable cause exists to believe that a defendant
 26 committed a crime, or that it does not. In the hands of the grand jury lies the power to charge
 a greater offense or a lesser offense; numerous counts or a single count; and perhaps most
 significant of all, a capital offense or a non-capital offense – all on the basis of the same

27 facts. Moreover, “[t]he grand jury is not bound to indict in every case where a conviction
 28 can be obtained.”

1 474 U.S. at 263 (quoting United States v. Ciambrone, 601 F.2d 616, 629 (2nd Cir. 1979) (Friendly, J.,
2 dissenting)); accord Campbell v. Louisiana, 523 U.S. 392, 399 (1998) (The grand jury “controls not only
3 the initial decision to indict, but also significant decisions such as how many counts to charge and whether
4 to charge a greater or lesser offense, including the important decision whether to charge a capital crime.”).
5 Nor would the January 2007 grand jury ever believe that it was empowered to assess the “the need to indict.”
6 See id. at 264. Judge Burns’s grand jury is not Vasquez’s grand jury. The instructions therefore represent
7 structural constitutional error “that interferes with the grand jury’s independence and the integrity of the
8 grand jury proceeding.” See United States v. Isgro, 974 F.2d 1091, 1094 (9th Cir. 1992). The indictment
9 must therefore be dismissed. Id.

10 The Navarro-Vargas II majority’s faith in the structure of the grand jury *is not* a cure for the
11 instructions excesses. The Navarro-Vargas II majority attributes “[t]he grand jury’s discretion -- its
12 independence -- [to] the absolute secrecy of its deliberations and vote and the unreviewability of its
13 decisions.” 408 F.3d at 1200. As a result, the majority discounts the effect that a judge’s instructions may
14 have on a grand jury because “it is the *structure* of the grand jury process and its *function* that make it
15 independent.” Id. at 1202 (emphases in the original).

16 Judge Hawkins sharply criticized this approach. The majority, he explains, “believes that the
17 ‘structure’ and ‘function’ of the grand jury -- particularly the secrecy of the proceedings and unreviewability
18 of many of its decisions -- sufficiently protects that power.” See id. at 1214 (Hawkins, J., dissenting). The
19 flaw in the majority’s analysis is that “[i]nstructing a grand jury that it lacks power to do anything beyond
20 making a probable cause determination ... unconstitutionally undermines the very structural protections that
21 the majority believes save[] the instruction.” Id. After all, it is an “almost invariable assumption of the law
22 that jurors follow their instructions.” Id. (quoting Richardson v. Marsh, 481 U.S. 200, 206 (1987)). If that
23 “invariable assumption” were to hold true, then the grand jurors could not possibly fulfill the role described
24 in Vasquez. Indeed, “there is something supremely cynical about saying that it is fine to give jurors
25 erroneous instructions because nothing will happen if they disobey them.” Id.

26 In setting forth Judge Hawkins’ views, Mr. Ochoa-Ramirez understands that Judge Burns may not
27 adopt them solely because the reasoning that supports them is so much more persuasive than the majority’s
28

sophistry. Rather, he sets them forth to urge the Court *not to extend* what is already untenable reasoning.

Here, again, the question is not an obscure interpretation of the word “should”, especially in light of the instructions and commentary by Judge Burns during voir dire discussed above - unaccounted for by the Court in Navarro-Vargas II because they had not yet been disclosed to the defense, but an absolute ban on the right to refuse to indict that directly conflicts with the recognition of that right in Vasquez, Campbell, and both Navarro-Vargas II opinions. Navarro-Vargas II is distinguishable on that basis, but not only that.

Judge Burns did not limit itself to denying the grand jurors the power that Vasquez plainly states they enjoy. He also excused prospective grand jurors who might have exercised that Fifth Amendment prerogative, excusing “three [jurors] in this case, because they could not adhere to [that] principle....” See Ex. A at 8; Ex. B at 17, 28. The structure of the grand jury and the secrecy of its deliberations cannot embolden grand jurors who are no longer there, likely because they expressed their willingness to act as the conscience of the community. See Navarro-Vargas II, 408 F.3d at 1210-11 (Hawkins, J., dissenting) (a grand jury exercising its powers under Vasquez “serves ... to protect the accused from the other branches of government by acting as the ‘conscience of the community.’”) (quoting Gaither v. United States, 413 F.2d 1061, 1066 & n.6 (D.C. Cir. 1969)). The federal courts possess only “very limited” power “to fashion, on their own initiative, rules of grand jury procedure,” United States v. Williams, 504 U.S. 36, 50 (1992), and, here, Judge Burns has both fashioned his own rules and enforced them.

D. The Instructions Conflict with Williams’ Holding That There Is No Duty to Present Exculpatory Evidence to the Grand Jury.

In Williams, the defendant, although conceding that it was not required by the Fifth Amendment, argued that the federal courts should exercise their supervisory power to order prosecutors to disclose exculpatory evidence to grand jurors, or, perhaps, to find such disclosure required by Fifth Amendment common law. See 504 U.S. at 45, 51. Williams held that “as a general matter at least, no such ‘supervisory’ judicial authority exists.” See id. at 47. Indeed, although the supervisory power may provide the authority “to dismiss an indictment because of misconduct before the grand jury, at least where that misconduct amounts to a violation of one of those ‘few, clear rules which were carefully drafted and approved by Judge Burns and by Congress to ensure the integrity of the grand jury’s functions,’” id. at 46 (citation omitted), it does not serve as “a means of *prescribing* such standards of prosecutorial conduct in the first instance.”

1 Id. at 47 (emphasis added). The federal courts possess only “very limited” power “to fashion, on their own
 2 initiative, rules of grand jury procedure.” Id. at 50. As a consequence, Williams rejected the defendant’s
 3 claim, both as an exercise of supervisory power and as Fifth Amendment common law. See id. at 51-55.

4 Despite the holding in Williams, the instructions here assure the grand jurors that prosecutors would
 5 present to them evidence that tended to undercut probable cause. See Ex. A at 20.

6 Now, again, this emphasizes the difference between the function of the grand jury and the
 7 trial jury. You’re all about probable cause. If you think that there’s evidence out there that
 8 might cause you say “well, I don’t think probable cause exists,” then it’s incumbent upon you
 9 to hear that evidence as well. As I told you, in most instances, *the U.S. Attorneys are duty-*
bound to present evidence that cuts against what they may be asking you to do if they’re
aware of that evidence.

10 Id. (emphasis added). Moreover, the district court later returned to the notion of the prosecutors and their
 11 duties, advising the grand jurors that they “can expect that the U.S. Attorneys that will appear in from of
 12 [them] will be candid, they’ll be honest, and ... they’ll act in good faith in all matters presented to you.” See
 13 id. at 27. The Ninth Circuit has already concluded it is likely this final comment is “unnecessary.” See
 14 Navarro-Vargas, 408 F.3d at 1207.

15 This particular instruction has a devastating effect on the grand jury’s protective powers, particularly
 16 if it is not true. It begins by emphasizing the message that Navarro-Vargas II somehow concluded was not
 17 conveyed by the previous instruction: “You’re all about probable cause.” See Ex. A at 20. Thus, once again,
 18 the grand jury is reminded that they are limited to probable cause determinations (a reminder that was
 19 probably unnecessary in light of the fact that Judge Burns had already told the grand jurors that they likely
 20 would be excused if they rejected this limitation). The instruction goes on to tell the grand jurors that they
 21 should consider evidence that undercuts probable cause, but also advises the grand jurors that the prosecutor
 22 will present it. The end result, then, is that grand jurors should consider evidence that goes against probable
 23 cause, but, if none is presented by the government, they can presume that there is none. After all, “in most
 24 instances, the U.S. Attorneys are duty-bound to present evidence that cuts against what they may be asking
 25 you to do if they’re aware of that evidence.” See id. Moreover, during voir dire, Judge Burns informed the
 26 jurors that “my experience is that the prosecutors don’t play hide-the-ball. If there’s something adverse or
 27 that cuts against the charge, you’ll be informed of that. *They have a duty to do that.*” See Ex. B at 14-15
 28 (emphasis added). Thus, if the exculpatory evidence existed, it necessarily would have been presented by

1 the “duty-bound” prosecutor, because the grand jurors “can expect that the U.S. Attorneys that will appear
2 in from of [them] will be candid, they’ll be honest, and ... they’ll act in good faith in all matters presented
3 to you.” See Ex. A at 27.

4 These instructions create a presumption that, in cases where the prosecutor does not present
5 exculpatory evidence, no exculpatory evidence exists. A grand juror’s reasoning, in a case in which no
6 exculpatory evidence was presented, would proceed along these lines:

7 (1) I have to consider evidence that undercuts probable cause.

8 (2) The candid, honest, duty-bound prosecutor would, in good faith, have presented any such
9 evidence to me, if it existed.

10 (3) Because no such evidence was presented to me, I may conclude that there is none.

11 Even if some exculpatory evidence were presented, a grand juror would necessarily presume that the
12 evidence presented represents the universe of all available exculpatory evidence; if there was more, the duty-
13 bound prosecutor would have presented it.

14 The instructions, therefore, discourage investigation -- if exculpatory evidence were out there, the
15 prosecutor would present it, so investigation is a waste of time -- and provide additional support to every
16 probable cause determination: i.e., this case may be weak, but I know that there is nothing on the other side
17 of the equation because it was not presented. A grand jury so badly misguided is no grand jury at all under
18 the Fifth Amendment.

19 V.

20 **MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS**

21 *Defense counsel has received 37 pages and 1 DVD of discovery in this case.* As more information
22 comes to light, due to the Government providing additional discovery in response to these motions or an
23 order of this Court, the defense may find it necessary to file further motions. It is, therefore, requested that
24 defense counsel be allowed the opportunity to file further motions based upon information gained through
25 the discovery process.

26 ///

27 ///

28 ///

VI.

CONCLUSION

For the foregoing reasons, Mr. Ochoa-Ramirez respectfully requests that the Court grant the above motions.

Respectfully submitted,

Dated: June 23, 2008

s/ Hanni M. Fakhoury

HANNI M. FAKHOURY

Federal Defenders of San Diego, Inc.

Attorneys for Mr. Ochoa-Ramirez

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08CR1637-WQH

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EXHIBIT "A"

Reporter's Transcript of Proceedings

January 11, 2007

In Re: The Impanelment of Grand

Jury Panels 07-1 and 07-2

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3
4

5 IN RE: THE IMPANELMENT)
6 OF GRAND JURY PANELS 07-1 AND)
7 07-2)
8)
9)
_____)

10
11 BEFORE THE HONORABLE LARRY ALAN BURNS
12 UNITED STATES DISTRICT JUDGE
13

14 REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS
15 WEDNESDAY, JANUARY 11, 2007
16
17
18
19
20

21 COURT REPORTER: EVA OEMICK
22 OFFICIAL COURT REPORTER
23 UNITED STATES COURTHOUSE
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1 SAN DIEGO, CALIFORNIA-WEDNESDAY, JANUARY 11, 2007-9:30 A.M.

2 THE COURT: LADIES AND GENTLEMEN, YOU HAVE BEEN
3 SELECTED TO SIT ON THE GRAND JURY. IF YOU'LL STAND AND RAISE
4 YOUR RIGHT HAND, PLEASE.

5 MR. HAMRICK: DO YOU, AND EACH OF YOU, SOLEMNLY
6 SWEAR OR AFFIRM THAT YOU SHALL DILIGENTLY INQUIRE INTO AND
7 MAKE TRUE PRESENTMENT OR INDICTMENT OF ALL MATTERS AND THINGS
8 AS SHALL BE GIVEN TO YOU IN CHARGE OR OTHERWISE COME TO YOUR
9 KNOWLEDGE TOUCHING YOUR GRAND JURY SERVICE; TO KEEP SECRET THE
10 COUNSEL OF THE UNITED STATES, YOUR FELLOWS AND YOURSELVES; NOT
11 TO PRESENT OR INDICT ANY PERSON THROUGH HATRED, MALICE OR ILL
12 WILL; NOR LEAVE ANY PERSON UNREPRESENTED OR UNINDICTED THROUGH
13 FEAR, FAVOR, OR AFFECTION, NOR FOR ANY REWARD, OR HOPE OR
14 PROMISE THEREOF; BUT IN ALL YOUR PRESENTMENTS AND INDICTMENTS
15 TO PRESENT THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE
16 TRUTH, TO THE BEST OF YOUR SKILL AND UNDERSTANDING?

17 IF SO, ANSWER, "I DO."

18 (ALL GRAND JURORS ANSWER AFFIRMATIVELY)

19 THE COURT: ALL JURORS HAVE TAKEN THE OATH AND
20 ANSWERED AFFIRMATIVELY.

21 IF YOU'LL HAVE A SEAT. WE ARE NEARLY COMPLETED WITH
22 THIS PROCESS.

23 I AM OBLIGATED BY THE CONVENTION OF THE COURT AND
24 THE LAW OF THE UNITED STATES TO GIVE YOU A FURTHER CHARGE
25 REGARDING YOUR RESPONSIBILITY AS GRAND JURORS. THIS WILL

1 APPLY NOT ONLY TO THOSE WHO HAVE BEEN SWORN, BUT THE REST OF
2 YOU WHOSE NAMES HAVE NOT YET BEEN CALLED, YOU ARE GOING TO BE
3 PUT IN RESERVE FOR US.

4 AND IF DISABILITIES OCCUR -- I DON'T MEAN IN A
5 PHYSICAL SENSE, BUT PEOPLE MOVE OR SITUATIONS COME UP WHERE
6 SOME OF THE FOLKS THAT HAVE BEEN SWORN IN TODAY ARE RELIEVED,
7 YOU WILL BE CALLED AS REPLACEMENT GRAND JURORS. SO THESE
8 INSTRUCTIONS APPLY TO ALL WHO ARE ASSEMBLED HERE TODAY.

9 NOW THAT YOU HAVE BEEN IMPANELED AND SWORN AS A
10 GRAND JURY, IT'S THE COURT'S RESPONSIBILITY TO INSTRUCT YOU ON
11 THE LAW WHICH GOVERNS YOUR ACTIONS AND YOUR DELIBERATIONS AS
12 GRAND JURORS.

13 THE FRAMERS OF OUR FEDERAL CONSTITUTION DETERMINED
14 AND DEEMED THE GRAND JURY SO IMPORTANT TO THE ADMINISTRATION
15 OF JUSTICE THAT THEY INCLUDED A PROVISION FOR THE GRAND JURY
16 IN OUR BILL OF RIGHTS.

17 AS I SAID BEFORE, THE 5TH AMENDMENT TO THE UNITED
18 STATES CONSTITUTION PROVIDES, IN PART, THAT NO PERSON SHALL BE
19 HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME
20 WITHOUT ACTION BY THE GRAND JURY.

21 WHAT THAT MEANS IN A VERY REAL SENSE IS YOU'RE THE
22 BUFFER BETWEEN THE GOVERNMENT'S POWER TO CHARGE SOMEONE WITH A
23 CRIME AND THAT CASE GOING FORWARD OR NOT GOING FORWARD.

24 THE FUNCTION OF THE GRAND JURY, IN FEDERAL COURT AT
25 LEAST, IS TO DETERMINE PROBABLE CAUSE. THAT'S THE SIMPLE

1 FORMULATION THAT I MENTIONED TO A NUMBER OF YOU DURING THE
2 JURY SELECTION PROCESS. PROBABLE CAUSE IS JUST AN ANALYSIS OF
3 WHETHER A CRIME WAS COMMITTED AND THERE'S A REASONABLE BASIS
4 TO BELIEVE THAT AND WHETHER A CERTAIN PERSON IS ASSOCIATED
5 WITH THE COMMISSION OF THAT CRIME, COMMITTED IT OR HELPED
6 COMMIT IT.

7 IF THE ANSWER IS YES, THEN AS GRAND JURORS YOUR
8 FUNCTION IS TO FIND THAT THE PROBABLE CAUSE IS THERE, THAT THE
9 CASE HAS BEEN SUBSTANTIATED, AND IT SHOULD MOVE FORWARD. IF
10 CONSCIENTIOUSLY, AFTER LISTENING TO THE EVIDENCE, YOU SAY "NO,
11 I CAN'T FORM A REASONABLE BELIEF EITHER THAT A CRIME WAS
12 COMMITTED OR THAT THIS PERSON HAS ANYTHING TO DO WITH IT, THEN
13 YOUR OBLIGATION, OF COURSE, WOULD BE TO DECLINE TO INDICT, TO
14 TURN THE CASE AWAY AND NOT HAVE IT GO FORWARD.

15 A GRAND JURY CONSISTS OF 23 MEMBERS OF THE COMMUNITY
16 DRAWN AT RANDOM. I'VE USED THE TERM "INFAMOUS CRIME." AN
17 INFAMOUS CRIME, UNDER OUR LAW, REFERS TO A SERIOUS CRIME WHICH
18 CAN BE PUNISHED BY IMPRISONMENT BY MORE THAN ONE YEAR. THE
19 PROSECUTORS WILL PRESENT FELONY CASES TO THE GRAND JURY.
20 MISDEMEANORS, UNDER FEDERAL LAW, THEY HAVE DISCRETION TO
21 CHARGE ON THEIR OWN. AND THEY'RE NOT -- THOSE CHARGES --
22 MISDEMEANORS AREN'T ENTITLED TO PRESENTMENT BEFORE A GRAND
23 JURY.

24 BUT ANY CASE THAT CARRIES A PENALTY OF A YEAR OR
25 MORE MUST BE PRESENTED TO -- ACTUALLY, MORE THAN A YEAR. A

1 YEAR AND A DAY OR LONGER MUST BE PRESENTED TO A GRAND JURY.

2 THE PURPOSE OF THE GRAND JURY, AS I MENTIONED, IS TO
3 DETERMINE WHETHER THERE'S SUFFICIENT EVIDENCE TO JUSTIFY A
4 FORMAL ACCUSATION AGAINST A PERSON.

5 IF LAW ENFORCEMENT OFFICIALS -- AND I DON'T MEAN
6 THIS IN A DISPARAGING WAY. BUT IF LAW ENFORCEMENT OFFICIALS,
7 INCLUDING AGENTS AS WELL AS THE FOLKS THAT STAFF THE U.S.
8 ATTORNEY'S OFFICE, WERE NOT REQUIRED TO SUBMIT CHARGES TO AN
9 IMPARTIAL GRAND JURY TO DETERMINE WHETHER THE EVIDENCE WAS
10 SUFFICIENT, THEN OFFICIALS IN OUR COUNTRY WOULD BE FREE TO
11 ARREST AND BRING ANYONE TO TRIAL NO MATTER HOW LITTLE EVIDENCE
12 EXISTED TO SUPPORT THE CHARGE. WE DON'T WANT THAT. WE DON'T
13 WANT THAT.

14 WE WANT THE BURDEN OF THE TRIAL TO BE JUSTIFIED BY
15 SUBSTANTIAL EVIDENCE, EVIDENCE THAT CONVINCES YOU OF PROBABLE
16 CAUSE TO BELIEVE THAT A CRIME PROBABLY OCCURRED AND THE PERSON
17 IS PROBABLY RESPONSIBLE.

18 NOW, AGAIN, I MAKE THE DISTINCTION YOU DON'T HAVE TO
19 VOTE ON ULTIMATE OUTCOMES. THAT'S NOT UP TO YOU. YOU CAN BE
20 ASSURED THAT IN EACH CASE, YOU INDICT THE PERSON WHO WILL BE
21 ENTITLED TO A FULL SET OF RIGHTS AND THAT THERE WILL BE A JURY
22 TRIAL IF THE PERSON ELECTS ONE. THE JURY WILL HAVE TO PASS ON
23 THE ACCUSATION ONCE AGAIN USING A MUCH HIGHER STANDARD OF
24 PROOF, PROOF BEYOND A REASONABLE DOUBT.

25 AS MEMBERS OF THE GRAND JURY, YOU, IN A VERY REAL

1 SENSE, STAND BETWEEN THE GOVERNMENT AND THE ACCUSED. IT'S
2 YOUR DUTY TO SEE THAT INDICTMENTS ARE RETURNED ONLY AGAINST
3 THOSE WHOM YOU FIND PROBABLE CAUSE TO BELIEVE ARE GUILTY AND
4 TO SEE TO IT THAT THE INNOCENT ARE NOT COMPELLED TO GO TO
5 TRIAL OR EVEN COMPELLED TO FACE AN ACCUSATION.

6 IF A MEMBER OF THE GRAND JURY IS RELATED BY BLOOD OR
7 MARRIAGE OR KNOWS OR SOCIALIZES TO SUCH AN EXTENT AS TO FIND
8 HIMSELF OR HERSELF IN A BIASED STATE OF MIND AS TO THE PERSON
9 UNDER INVESTIGATION OR ALTERNATIVELY YOU SHOULD FIND YOURSELF
10 BIASED FOR ANY REASON, THEN THAT PERSON SHOULD NOT PARTICIPATE
11 IN THE INVESTIGATION UNDER QUESTION OR RETURN THE
12 INDICTMENT.

13 ONE OF OUR GRAND JURORS, MS. GARFIELD, HAS RELATIVES
14 THAT -- OBVIOUSLY, MS. GARFIELD, IF YOUR SON OR YOUR HUSBAND
15 WAS EVER CALLED IN FRONT OF THE GRAND JURY, THAT WOULD BE A
16 CASE WHERE YOU WOULD SAY, "THIS IS JUST TOO CLOSE. I'M GOING
17 TO RECUSE MYSELF FROM THIS PARTICULAR CASE. NO ONE WOULD
18 IMAGINE THAT I COULD BE ABSOLUTELY IMPARTIAL WHEN IT COMES TO
19 MY OWN BLOOD RELATIVES."

20 SO THOSE ARE THE KINDS OF SITUATIONS THAT I REFER TO
21 WHEN I TALK ABOUT EXCUSING YOURSELF FROM A PARTICULAR GRAND
22 JURY DELIBERATION. IF THAT HAPPENS, YOU SHOULD INDICATE TO
23 THE FOREPERSON OF THE GRAND JURY, WITHOUT GOING INTO DETAIL,
24 FOR WHATEVER REASON, THAT YOU WANT TO BE EXCUSED FROM GRAND
25 JURY DELIBERATIONS ON A PARTICULAR CASE OR CONSIDERATION OF A

1 PARTICULAR MATTER IN WHICH YOU FEEL YOU'RE BIASED OR YOU MAY
2 HAVE A CONFLICT.

3 THIS DOES NOT MEAN THAT IF YOU HAVE AN OPPORTUNITY,
4 YOU SHOULD NOT PARTICIPATE IN AN INVESTIGATION. HOWEVER, IT
5 DOES MEAN THAT IF YOU HAVE A FIXED STATE OF MIND BEFORE YOU
6 HEAR EVIDENCE EITHER ON THE BASIS OF FRIENDSHIP OR BECAUSE YOU
7 HATE SOMEBODY OR HAVE SIMILAR MOTIVATION, THEN YOU SHOULD STEP
8 ASIDE AND NOT PARTICIPATE IN THAT PARTICULAR GRAND JURY
9 INVESTIGATION AND IN VOTING ON THE PROPOSED INDICTMENT. THIS
10 IS WHAT I MEANT WHEN I TALKED TO YOU ABOUT BEING FAIR-MINDED.

11 ALTHOUGH THE GRAND JURY HAS EXTENSIVE POWERS,
12 THEY'RE LIMITED IN SOME IMPORTANT RESPECTS.

13 FIRST, THESE ARE THE LIMITATIONS ON YOUR SERVICE:
14 YOU CAN ONLY INVESTIGATE CONDUCT THAT VIOLATES THE FEDERAL
15 CRIMINAL LAWS. THAT'S YOUR CHARGE AS FEDERAL GRAND JURORS, TO
16 LOOK AT VIOLATIONS OR SUSPECTED VIOLATIONS OF FEDERAL CRIMINAL
17 LAW.

18 YOU ARE A FEDERAL GRAND JURY, AND CRIMINAL ACTIVITY
19 WHICH VIOLATES STATE LAW, THE LAWS OF THE STATE OF CALIFORNIA,
20 IS OUTSIDE OF YOUR INQUIRY. IT MAY HAPPEN AND FREQUENTLY DOES
21 HAPPEN THAT SOME OF THE CONDUCT THAT'S UNDER INVESTIGATION BY
22 THE FEDERAL GRAND JURY ALSO VIOLATES STATE LAW. AND THIS IS
23 FINE. THAT'S PROPER. BUT THERE ALWAYS HAS TO BE SOME FEDERAL
24 CONNECTION TO WHAT IS UNDER INVESTIGATION OR YOU HAVE NO
25 JURISDICTION.

1 THERE'S ALSO A GEOGRAPHIC LIMITATION ON THE SCOPE OF
2 YOUR INQUIRIES AND THE EXERCISE OF YOUR POWERS. YOU MAY
3 INQUIRE ONLY INTO FEDERAL OFFENSES COMMITTED IN OUR FEDERAL
4 DISTRICT, WHICH INCLUDES SAN DIEGO AND IMPERIAL COUNTIES; THAT
5 IS, THE SOUTHERN DISTRICT OF CALIFORNIA.

6 YOU MAY HAVE CASES THAT IMPLICATE ACTIVITIES IN
7 OTHER AREAS, OTHER DISTRICTS, AND THERE MAY BE SOME EVIDENCE
8 OF CRIMINAL ACTIVITY IN CONJUNCTION WITH WHAT GOES ON HERE
9 THAT'S ALSO HAPPENING ELSEWHERE. THERE ALWAYS HAS TO BE A
10 CONNECTION TO OUR DISTRICT.

11 THROUGHOUT THE UNITED STATES, WE HAVE 93 DISTRICTS
12 NOW. THE STATES ARE CUT UP LIKE PIECES OF PIE, AND EACH
13 DISTRICT IS SEPARATELY DENOMINATED, AND EACH DISTRICT HAS
14 RESPONSIBILITY FOR THEIR OWN COUNTIES AND GEOGRAPHY. AND YOU,
15 TOO, ARE BOUND BY THAT LIMITATION.

16 I'VE GONE OVER THIS WITH A COUPLE OF PEOPLE. YOU
17 UNDERSTOOD FROM THE QUESTIONS AND ANSWERS THAT A COUPLE OF
18 PEOPLE WERE EXCUSED, I THINK THREE IN THIS CASE, BECAUSE THEY
19 COULD NOT ADHERE TO THE PRINCIPLE THAT I'M ABOUT TO TELL YOU.

20 BUT IT'S NOT FOR YOU TO JUDGE THE WISDOM OF THE
21 CRIMINAL LAWS ENACTED BY CONGRESS; THAT IS, WHETHER OR NOT
22 THERE SHOULD BE A FEDERAL LAW OR SHOULD NOT BE A FEDERAL LAW
23 DESIGNATING CERTAIN ACTIVITY IS CRIMINAL IS NOT UP TO YOU.
24 THAT'S A JUDGMENT THAT CONGRESS MAKES.

25 AND IF YOU DISAGREE WITH THAT JUDGMENT MADE BY

1 CONGRESS, THEN YOUR OPTION IS NOT TO SAY "WELL, I'M GOING TO
2 VOTE AGAINST INDICTING EVEN THOUGH I THINK THAT THE EVIDENCE
3 IS SUFFICIENT" OR "I'M GOING TO VOTE IN FAVOR OF EVEN THOUGH
4 THE EVIDENCE MAY BE INSUFFICIENT." INSTEAD, YOUR OBLIGATION
5 IS TO CONTACT YOUR CONGRESSMAN OR ADVOCATE FOR A CHANGE IN THE
6 LAWS, BUT NOT TO BRING YOUR PERSONAL DEFINITION OF WHAT THE
7 LAW OUGHT TO BE AND TRY TO IMPOSE THAT THROUGH APPLYING IT IN
8 A GRAND JURY SETTING.

9 FURTHERMORE, WHEN YOU'RE DECIDING WHETHER TO INDICT
10 OR NOT TO INDICT, YOU SHOULDN'T BE CONCERNED WITH PUNISHMENT
11 THAT ATTACHES TO THE CHARGE. I THINK I ALSO ALLUDED TO THIS
12 IN THE CONVERSATION WITH ONE GENTLEMAN. JUDGES ALONE
13 DETERMINE PUNISHMENT. WE TELL TRIAL JURIES IN CRIMINAL CASES
14 THAT THEY'RE NOT TO BE CONCERNED WITH THE MATTER OF PUNISHMENT
15 EITHER. YOUR OBLIGATION AT THE END OF THE DAY IS TO MAKE A
16 BUSINESS-LIKE DECISION ON FACTS AND APPLY THOSE FACTS TO THE
17 LAW AS IT'S EXPLAINED AND READ TO YOU.

18 THE CASES WHICH YOU'LL APPEAR WILL COME BEFORE YOU
19 IN VARIOUS WAYS. FREQUENTLY, PEOPLE ARE ARRESTED DURING OR
20 SHORTLY AFTER THE COMMISSION OF AN ALLEGED CRIME. AND THEN
21 THEY'RE TAKEN BEFORE A MAGISTRATE JUDGE, WHO HOLDS A
22 PRELIMINARY HEARING TO DETERMINE WHETHER INITIALLY THERE'S
23 PROBABLE CAUSE TO BELIEVE A PERSON'S COMMITTED A CRIME.

24 ONCE THE MAGISTRATE JUDGE FINDS PROBABLE CAUSE, HE
25 OR SHE WILL DIRECT THAT THE ACCUSED PERSON BE HELD FOR ACTION

1 BY THE GRAND JURY. REMEMBER, UNDER OUR SYSTEM AND THE 5TH
2 AMENDMENT, TRIALS OF SERIOUS AND INFAMOUS CRIMES CAN ONLY
3 PROCEED WITH GRAND JURY ACTION. SO THE DETERMINATION OF THE
4 MAGISTRATE JUDGE IS JUST TO HOLD THE PERSON UNTIL THE GRAND
5 JURY CAN ACT. IT TAKES YOUR ACTION AS A GRAND JURY BEFORE THE
6 CASE CAN FORMALLY GO FORWARD. IT'S AT THAT POINT THAT YOU'LL
7 BE CALLED UPON TO CONSIDER WHETHER AN INDICTMENT SHOULD BE
8 RETURNED IN A GIVEN CASE.

9 OTHER CASES MAY BE BROUGHT TO YOU BY THE UNITED
10 STATES ATTORNEY OR AN ASSISTANT UNITED STATES ATTORNEY BEFORE
11 AN ARREST IS MADE. BUT DURING THE COURSE OF AN INVESTIGATION
12 OR AFTER AN INVESTIGATION HAS BEEN CONDUCTED, THERE'S TWO WAYS
13 THAT CASES GENERALLY ENTER THE CRIMINAL JUSTICE PROCESS: THE
14 REACTIVE OFFENSES WHERE, AS THE NAME IMPLIES, THE POLICE REACT
15 TO A CRIME AND ARREST SOMEBODY. AND THOSE CASES WILL THEN BE
16 SUBMITTED TO YOU AFTER MUCH OF THE FACTS ARE KNOWN. AND THEN
17 THERE'S PROACTIVE CASES, CASES WHERE MAYBE THERE'S A SUSPICION
18 OR A HUNCH OF WRONGDOING. THE FBI MAY BE CALLED UPON TO
19 INVESTIGATE OR SOME OTHER FEDERAL AGENCY, AND THEY MAY NEED
20 THE ASSISTANCE OF THE GRAND JURY IN FACILITATING THAT
21 INVESTIGATION.

22 THE GRAND JURY HAS BROAD INVESTIGATORY POWERS. YOU
23 HAVE THE POWER TO ISSUE SUBPOENAS, FOR EXAMPLE, FOR RECORDS OR
24 FOR PEOPLE TO APPEAR. SOMETIMES IT HAPPENS THAT PEOPLE SAY "I
25 DON'T HAVE TO TALK TO YOU" TO THE FBI, AND THEY REFUSE TO TALK

1 TO THE AUTHORITIES. UNDER THOSE CIRCUMSTANCES, ON OCCASION,
2 THE FBI MAY GO TO THE U.S. ATTORNEY AND SAY, "LOOK, YOU NEED
3 TO FIND OUT WHAT HAPPENED HERE. SUMMON THIS PERSON IN FRONT
4 OF THE GRAND JURY." SO IT MAY BE THAT YOU'RE CALLED UPON TO
5 EVALUATE WHETHER A CRIME OCCURRED AND WHETHER THERE OUGHT TO
6 BE AN INDICTMENT. YOU, IN A VERY REAL SENSE, ARE PART OF THE
7 INVESTIGATION.

8 IT MAY HAPPEN THAT DURING THE COURSE OF AN
9 INVESTIGATION INTO ONE CRIME, IT TURNS OUT THAT THERE IS
10 EVIDENCE OF A DIFFERENT CRIME THAT SURFACES. YOU, AS GRAND
11 JURORS, HAVE A RIGHT TO PURSUE THE NEW CRIME THAT YOU
12 INVESTIGATE, EVEN CALLING NEW WITNESSES AND SEEKING OTHER
13 DOCUMENTS OR PAPERS OR EVIDENCE BE SUBPOENAED.

14 NOW, IN THAT REGARD, THERE'S A CLOSE ASSOCIATION
15 BETWEEN THE GRAND JURY AND THE U.S. ATTORNEY'S OFFICE AND THE
16 INVESTIGATIVE AGENCIES OF THE FEDERAL GOVERNMENT. UNLIKE THE
17 U.S. ATTORNEY'S OFFICE OR THOSE INVESTIGATIVE AGENCIES, THE
18 GRAND JURY DOESN'T HAVE ANY POWER TO EMPLOY INVESTIGATORS OR
19 TO EXPEND FEDERAL FUNDS FOR INVESTIGATIVE PURPOSES.

20 INSTEAD, YOU MUST GO BACK TO THE U.S. ATTORNEY AND
21 ASK THAT THOSE THINGS BE DONE. YOU'LL WORK CLOSELY WITH THE
22 U.S. ATTORNEY'S OFFICE IN YOUR INVESTIGATION OF CASES. IF ONE
23 OR MORE GRAND JURORS WANT TO HEAR ADDITIONAL EVIDENCE ON A
24 CASE OR THINK THAT SOME ASPECT OF THE CASE OUGHT TO BE
25 PURSUED, YOU MAY MAKE THAT REQUEST TO THE U.S. ATTORNEY.

1 IF THE U.S. ATTORNEY REFUSES TO ASSIST YOU OR IF YOU
2 BELIEVE THAT THE U.S. ATTORNEY IS NOT ACTING IMPARTIALLY, THEN
3 YOU CAN TAKE THE MATTER UP WITH ME. I'M THE ASSIGNED JURY
4 JUDGE, AND I WILL BE THE LIAISON WITH THE GRAND JURIES.

5 YOU CAN USE YOUR POWER TO INVESTIGATE EVEN OVER THE
6 ACTIVE OPPOSITION OF THE UNITED STATES ATTORNEY. IF THE
7 MAJORITY OF YOU ON THE GRAND JURY THINK THAT A SUBJECT OUGHT
8 TO BE PURSUED AND THE U.S. ATTORNEY THINKS NOT, THEN YOUR
9 DECISION TRUMPS, AND YOU HAVE THE RIGHT TO HAVE THAT
10 INVESTIGATION PURSUED IF YOU BELIEVE IT'S NECESSARY TO DO SO
11 IN THE INTEREST OF JUSTICE.

12 I MENTION THESE THINGS TO YOU AS A THEORETICAL
13 POSSIBILITY. THE TRUTH OF THE MATTER IS IN MY EXPERIENCE HERE
14 IN THE OVER 20 YEARS IN THIS COURT, THAT KIND OF TENSION DOES
15 NOT EXIST ON A REGULAR BASIS, THAT I CAN RECALL, BETWEEN THE
16 U.S. ATTORNEY AND GRAND JURIES. THEY GENERALLY WORK TOGETHER.
17 THE U.S. ATTORNEY IS GENERALLY DEFERENTIAL TO THE GRAND JURY
18 AND WHAT THE GRAND JURY WANTS.

19 IT'S IMPORTANT TO KEEP IN MIND THAT YOU WILL AND DO
20 HAVE AN INVESTIGATORY FUNCTION AND THAT THAT FUNCTION IS
21 PARAMOUNT TO EVEN WHAT THE U.S. ATTORNEY MAY WANT YOU TO DO.

22 IF YOU, AS I SAID, BELIEVE THAT AN INVESTIGATION
23 OUGHT TO GO INTO OTHER AREAS BOTH IN TERMS OF SUBJECT MATTER,
24 BEING A FEDERAL CRIME, AND GEOGRAPHICALLY, THEN YOU AS A GROUP
25 CAN MAKE THAT DETERMINATION AND DIRECT THE INVESTIGATION THAT

1 WAY.

2 SINCE THE UNITED STATES ATTORNEY HAS THE DUTY OF
3 PROSECUTING PERSONS CHARGED WITH THE COMMISSION OF FEDERAL
4 CRIMES, SHE OR ONE OF HER ASSISTANTS -- BY THE WAY, THE U.S.
5 ATTORNEY IN OUR DISTRICT IS MS. CAROL LAM -- SHE OR ONE OF HER
6 ASSISTANTS WILL PRESENT THE MATTERS WHICH THE GOVERNMENT HAS
7 DESIRES TO HAVE YOU CONSIDER. THE ATTORNEY WILL EDUCATE YOU
8 ON THE LAW THAT APPLIES BY READING THE LAW TO YOU OR POINTING
9 IT OUT, THE LAW THAT THE GOVERNMENT BELIEVES WAS VIOLATED.
10 THE ATTORNEY WILL SUBPOENA FOR TESTIMONY BEFORE YOU SUCH
11 WITNESSES AS THE LAWYER THINKS ARE IMPORTANT AND NECESSARY TO
12 ESTABLISH PROBABLE CAUSE AND ALLOW YOU TO DO YOUR FUNCTION,
13 AND ALSO ANY OTHER WITNESSES THAT YOU MAY REQUEST THE ATTORNEY
14 TO CALL IN RELATION TO THE SUBJECT MATTER UNDER INVESTIGATION.

15 REMEMBER THAT THE DIFFERENCE BETWEEN THE GRAND JURY
16 FUNCTION AND THAT OF THE TRIAL JURY IS THAT YOU ARE NOT
17 PRESIDING IN A FULL-BLOWN TRIAL. IN MOST OF THE CASES THAT
18 YOU APPEAR, THE LAWYER FOR THE GOVERNMENT IS NOT GOING TO
19 BRING IN EVERYBODY THAT MIGHT BE BROUGHT IN AT THE TIME OF
20 TRIAL; THAT IS, EVERYBODY THAT HAS SOME RELEVANT EVIDENCE TO
21 OFFER. THEY'RE NOT GOING TO BRING IN EVERYONE WHO CONCEIVABLY
22 COULD SAY SOMETHING THAT MIGHT BEAR ON THE OUTCOME. THEY'RE
23 PROBABLY GOING TO BRING IN A LIMITED NUMBER OF WITNESSES JUST
24 TO ESTABLISH PROBABLE CAUSE. OFTENTIMES, THEY PRESENT A
25 SKELETON CASE. IT'S EFFICIENT. IT'S ALL THAT'S NECESSARY.

1 IT SAVES TIME AND RESOURCES.

2 WHEN YOU ARE PRESENTED WITH A CASE, IT WILL TAKE 16
3 OF YOUR NUMBER OUT OF THE 23, 16 MEMBERS OF THE GRAND JURY OUT
4 OF THE 23, TO CONSTITUTE A QUORUM. YOU CAN'T DO BUSINESS
5 UNLESS THERE'S AT LEAST 16 MEMBERS OF THE GRAND JURY PRESENT
6 FOR THE TRANSACTION OF ANY BUSINESS. IF FEWER THAN 16 GRAND
7 JURORS ARE PRESENT EVEN FOR A MOMENT, THEN THE PROCEEDINGS OF
8 THE GRAND JURY MUST STOP. YOU CAN NEVER OPERATE WITHOUT A
9 QUORUM OF AT LEAST 16 MEMBERS PRESENT.

10 NOW, THE EVIDENCE THAT YOU WILL HEAR NORMALLY WILL
11 CONSIST OF TESTIMONY OF WITNESSES AND WRITTEN DOCUMENTS. YOU
12 MAY GET PHOTOGRAPHS. THE WITNESSES WILL APPEAR IN FRONT OF
13 YOU SEPARATELY. WHEN A WITNESS FIRST APPEARS BEFORE YOU, THE
14 GRAND JURY FOREPERSON WILL ADMINISTER AN OATH. THE PERSON
15 MUST SWEAR OR AFFIRM TO TELL THE TRUTH. AND AFTER THAT'S BEEN
16 ACCOMPLISHED, THE WITNESS WILL BE QUESTIONED.

17 ORDINARILY, THE U.S. ATTORNEY PRESIDING AT THE --
18 REPRESENTING THE U.S. GOVERNMENT AT THE GRAND JURY SESSION
19 WILL ASK THE QUESTIONS FIRST. THEN THE FOREPERSON OF THE
20 GRAND JURY MAY ASK QUESTIONS, AND OTHER MEMBERS OF THE GRAND
21 JURY MAY ASK QUESTIONS, ALSO.

22 I USED TO APPEAR IN FRONT OF THE GRAND JURY. I'LL
23 TELL YOU WHAT I WOULD DO IS FREQUENTLY I'D ASK THE QUESTIONS,
24 AND THEN I'D SEND THE WITNESS OUT AND ASK THE GRAND JURORS IF
25 THERE WERE ANY QUESTIONS THEY WANTED ME TO ASK. AND THE

1 REASON I DID THAT IS THAT I HAD THE LEGAL TRAINING TO KNOW
2 WHAT WAS RELEVANT AND WHAT MIGHT BE PREJUDICIAL TO THE
3 DETERMINATION OF WHETHER THERE WAS PROBABLE CAUSE.

4 A LOT OF TIMES PEOPLE WILL SAY, "WELL, HAS THIS
5 PERSON EVER DONE IT BEFORE?" AND WHILE THAT MAY BE A RELEVANT
6 QUESTION, ON THE ISSUE OF PROBABLE CAUSE, IT HAS TO BE
7 ASSESSED ON A CASE-BY-CASE BASIS. IN OTHER WORDS, THE
8 EVIDENCE OF THIS OCCASION OF CRIME THAT'S ALLEGED MUST BE
9 ADEQUATE WITHOUT REGARD TO WHAT THE PERSON HAS DONE IN THE
10 PAST. I WOULDN'T WANT THAT QUESTION ANSWERED UNTIL AFTER THE
11 GRAND JURY HAD MADE A DETERMINATION OF WHETHER THERE WAS
12 ENOUGH EVIDENCE.

13 SO WHEN I APPEARED IN FRONT OF THE GRAND JURY, I'D
14 TELL THEM "YOU'LL GET YOUR QUESTION ANSWERED, BUT I'D LIKE YOU
15 TO VOTE ON THE INDICTMENT FIRST. I'D LIKE YOU TO DETERMINE
16 WHETHER THERE'S ENOUGH EVIDENCE BASED ON WHAT'S BEEN
17 PRESENTED, AND THEN WE'LL ANSWER IT." I DIDN'T WANT TO
18 PREJUDICE THE GRAND JURY. THERE MAY BE SIMILAR CONCERNS THAT
19 COME UP. NOW, THE PRACTICES VARY AMONG THE ASSISTANT U.S.
20 ATTORNEYS THAT WILL APPEAR IN FRONT OF YOU.

21 ON OTHER OCCASIONS WHEN I DIDN'T THINK THERE WAS ANY
22 RISK THAT MIGHT PREJUDICE THE PROCESS, I WOULD ALLOW THE GRAND
23 JURY TO FOLLOW UP THEMSELVES AND ASK QUESTIONS. A LOT OF
24 TIMES, THE FOLLOW-UPS ARE FACTUAL ON DETAILED MATTERS. THAT
25 PRACTICE WILL VARY DEPENDING ON WHO IS REPRESENTING THE UNITED

1 STATES AND PRESENTING THE CASE TO YOU. THE POINT IS YOU HAVE
2 THE RIGHT TO ASK ADDITIONAL QUESTIONS OR TO ASK THAT THOSE
3 QUESTIONS BE PUT TO THE WITNESS.

4 IN THE EVENT A WITNESS DOESN'T SPEAK OR UNDERSTAND
5 ENGLISH, THEN ANOTHER PERSON WILL BE BROUGHT INTO THE ROOM.
6 OBVIOUSLY, THAT WOULD BE AN INTERPRETER TO ALLOW YOU TO
7 UNDERSTAND THE ANSWERS. WHEN WITNESSES DO APPEAR IN FRONT OF
8 THE GRAND JURY, THEY SHOULD BE TREATED COURTEOUSLY. QUESTIONS
9 SHOULD BE PUT TO THEM IN AN ORDERLY FASHION. THE QUESTIONS
10 SHOULD NOT BE HOSTILE.

11 IF YOU HAVE ANY DOUBT WHETHER IT'S PROPER TO ASK A
12 PARTICULAR QUESTION, THEN YOU CAN ASK THE U.S. ATTORNEY WHO'S
13 ASSISTING IN THE INVESTIGATION FOR ADVICE ON THE MATTER. YOU
14 ALONE AS GRAND JURORS DECIDE HOW MANY WITNESSES YOU WANT TO
15 HEAR. WITNESSES CAN BE SUBPOENAED FROM ANYWHERE IN THE
16 COUNTRY. YOU HAVE NATIONAL JURISDICTION.

17 HOWEVER, PERSONS SHOULD NOT ORDINARILY BE SUBJECTED
18 TO DISRUPTION OF THEIR DAILY LIVES UNLESS THERE'S GOOD REASON.
19 THEY SHOULDN'T BE HARASSED OR ANNOYED OR INCONVENIENCED.
20 THAT'S NOT THE PURPOSE OF THE GRAND JURY HEARING, NOR SHOULD
21 PUBLIC FUNDS BE EXPENDED TO BRING WITNESSES UNLESS YOU BELIEVE
22 THAT THE WITNESSES CAN PROVIDE MEANINGFUL, RELEVANT EVIDENCE
23 WHICH WILL ASSIST IN YOUR DETERMINATIONS AND YOUR
24 INVESTIGATION.

25 ALL WITNESSES WHO ARE CALLED IN FRONT OF THE GRAND

1 JURY HAVE CERTAIN RIGHTS. THESE INCLUDE, AMONG OTHERS, THE
2 RIGHT TO REFUSE TO ANSWER QUESTIONS ON THE GROUNDS THAT THE
3 ANSWER TO A QUESTION MIGHT INCRIMINATE THEM AND THE RIGHT TO
4 KNOW THAT ANYTHING THEY SAY MIGHT BE USED AGAINST THEM.

5 THE U.S. ATTORNEYS ARE CHARGED WITH THE OBLIGATION,
6 WHEN THEY'RE AWARE OF IT, OF ADVISING PEOPLE OF THIS RIGHT
7 BEFORE THEY QUESTION THEM. BUT BEAR THAT IN MIND.

8 IF A WITNESS DOES EXERCISE THE RIGHT AGAINST
9 SELF-INCRIMINATION, THEN THE GRAND JURY SHOULD NOT HOLD THAT
10 AS ANY PREJUDICE OR BIAS AGAINST THAT WITNESS. IT CAN PLAY NO
11 PART IN THE RETURN OF AN INDICTMENT AGAINST THE WITNESS. IN
12 OTHER WORDS, THE MERE EXERCISE OF THE PRIVILEGE AGAINST
13 SELF-INCRIMINATION, WHICH ALL OF US HAVE AS UNITED STATES
14 RESIDENTS, SHOULD NOT FACTOR INTO YOUR DETERMINATION OF
15 WHETHER THERE'S PROBABLE CAUSE TO GO FORWARD IN THIS CASE.
16 YOU MUST RESPECT THAT DETERMINATION BY THE PERSON AND NOT USE
17 IT AGAINST THEM.

18 IT'S AN UNCOMMON SITUATION THAT YOU'LL FACE WHEN
19 SOMEBODY DOES CLAIM THE PRIVILEGE AGAINST SELF-INCRIMINATION.
20 THAT'S BECAUSE USUALLY AT THE TIME A PERSON IS SUBPOENAED, IF
21 THERE'S A PROSPECT THAT THEY'RE GOING TO CLAIM THE PRIVILEGE,
22 THE U.S. ATTORNEY IS PUT ON NOTICE OF THAT BEFOREHAND EITHER
23 BY THE PERSON HIMSELF OR HERSELF OR MAYBE A LAWYER
24 REPRESENTING THE PERSON.

25 IN MY EXPERIENCE, MOST OF THE TIME THE U.S. ATTORNEY

1 WILL NOT THEN CALL THE PERSON IN FRONT OF YOU BECAUSE IT WOULD
2 BE TO NO EFFECT TO CALL THEM AND HAVE THEM ASSERT THEIR 5TH
3 AMENDMENT PRIVILEGE. BUT IT SOMETIMES DOES COME UP. IT
4 SOMETIMES HAPPENS. SOMETIMES THERE'S A QUESTION OF WHETHER
5 THE PERSON HAS A BONA FIDE PRIVILEGE AGAINST
6 SELF-INCRIMINATION. THAT'S A MATTER FOR THE COURT TO
7 DETERMINE IN ANCILLARY PROCEEDINGS. OR THE U.S. ATTORNEY MAY
8 BE UNAWARE OF A PERSON'S INCLINATION TO ASSERT THE 5TH. SO IT
9 MAY COME UP IN FRONT OF YOU. IT DOESN'T ALWAYS COME UP.

10 AS I MENTIONED TO YOU IN MY PRELIMINARY REMARKS,
11 WITNESSES ARE NOT PERMITTED TO HAVE A LAWYER WITH THEM IN THE
12 GRAND JURY ROOM. THE LAW DOESN'T PERMIT A WITNESS SUMMONED
13 BEFORE THE GRAND JURY TO BRING THE LAWYER WITH THEM, ALTHOUGH
14 WITNESSES DO HAVE A RIGHT TO CONFER WITH THEIR LAWYERS DURING
15 THE COURSE OF GRAND JURY INVESTIGATION PROVIDED THE CONFERENCE
16 OCCURS OUTSIDE THE GRAND JURY ROOM.

17 YOU MAY FACE A SITUATION WHERE A WITNESS SAYS "I'D
18 LIKE TO TALK TO MY LAWYER BEFORE I ANSWER THAT QUESTION," IN
19 WHICH CASE THE PERSON WOULD LEAVE THE ROOM, CONSULT WITH THE
20 LAWYER, AND THEN COME BACK INTO THE ROOM WHERE FURTHER ACTION
21 WOULD TAKE PLACE.

22 APPEARANCES BEFORE A GRAND JURY SOMETIMES PRESENT
23 COMPLEX LEGAL PROBLEMS THAT REQUIRE THE ASSISTANCE OF LAWYERS.
24 YOU'RE NOT TO DRAW ANY ADVERSE INFERENCE IF A WITNESS DOES ASK
25 TO LEAVE THE ROOM TO SPEAK TO HIS LAWYER OR HER LAWYER AND

1 THEN LEAVES FOR THAT PURPOSE.

2 ORDINARILY, NEITHER THE ACCUSED OR ANY WITNESS ON
3 THE ACCUSED'S BEHALF WILL TESTIFY IN THE GRAND JURY SESSION.
4 BUT UPON THE REQUEST OF AN ACCUSED, PREFERABLY IN WRITING, YOU
5 MAY AFFORD THE ACCUSED AN OPPORTUNITY TO APPEAR IN FRONT OF
6 YOU.

7 AS I'VE SAID, THESE PROCEEDINGS TEND TO BE ONE-SIDED
8 NECESSARILY. THE PROSECUTOR IS ASKING YOU TO RETURN AN
9 INDICTMENT TO A CRIMINAL CHARGE, AND THEY'LL MUSTER THE
10 EVIDENCE THAT THEY HAVE THAT THEY BELIEVE SUPPORTS PROBABLE
11 CAUSE AND PRESENT THAT TO YOU. BECAUSE IT'S NOT A FULL-BLOWN
12 TRIAL, YOU'RE LIKELY IN MOST CASES NOT TO HEAR THE OTHER SIDE
13 OF THE STORY, IF THERE IS ANOTHER SIDE TO THE STORY. THERE'S
14 NO PROVISION OF LAW THAT ALLOWS AN ACCUSED, FOR EXAMPLE, TO
15 CONTEST THE MATTER IN FRONT OF THE GRAND JURY.

16 IT MAY HAPPEN, AS I SAID, THAT AN ACCUSED MAY ASK TO
17 APPEAR IN FRONT OF YOU. BECAUSE THE APPEARANCE OF SOMEONE
18 ACCUSED OF A CRIME MAY RAISE COMPLICATED LEGAL PROBLEMS, YOU
19 SHOULD SEEK THE U.S. ATTORNEY'S ADVICE AND COUNSEL, IF
20 NECESSARY, AND THAT OF THE COURT BEFORE ALLOWING THAT.

21 BEFORE ANY ACCUSED PERSON IS ALLOWED TO TESTIFY,
22 THEY MUST BE ADVISED OF THEIR RIGHTS, AND YOU SHOULD BE
23 COMPLETELY SATISFIED THAT THEY UNDERSTAND WHAT THEY'RE DOING.

24 YOU'RE NOT REQUIRED TO SUMMON WITNESSES WHICH AN
25 ACCUSED PERSON MAY WANT YOU TO HAVE EXAMINED UNLESS PROBABLE

1 CAUSE FOR AN INDICTMENT MAY BE EXPLAINED AWAY BY THE TESTIMONY
2 OF THOSE WITNESSES.

3 NOW, AGAIN, THIS EMPHASIZES THE DIFFERENCE BETWEEN
4 THE FUNCTION OF THE GRAND JURY AND THE TRIAL JURY. YOU'RE ALL
5 ABOUT PROBABLE CAUSE. IF YOU THINK THAT THERE'S EVIDENCE OUT
6 THERE THAT MIGHT CAUSE YOU TO SAY "WELL, I DON'T THINK
7 PROBABLE CAUSE EXISTS," THEN IT'S INCUMBENT UPON YOU TO HEAR
8 THAT EVIDENCE AS WELL. AS I TOLD YOU, IN MOST INSTANCES, THE
9 U.S. ATTORNEYS ARE DUTY-BOUND TO PRESENT EVIDENCE THAT CUTS
10 AGAINST WHAT THEY MAY BE ASKING YOU TO DO IF THEY'RE AWARE OF
11 THAT EVIDENCE.

12 THE DETERMINATION OF WHETHER A WITNESS IS TELLING
13 THE TRUTH IS SOMETHING FOR YOU TO DECIDE. NEITHER THE COURT
14 NOR THE PROSECUTORS NOR ANY OFFICERS OF THE COURT MAY MAKE
15 THAT DETERMINATION FOR YOU. IT'S THE EXCLUSIVE PROVINCE OF
16 GRAND JURORS TO DETERMINE WHO IS CREDIBLE AND WHO MAY NOT BE.

17 FINALLY, LET ME TELL YOU THIS: THERE'S ANOTHER
18 DIFFERENCE BETWEEN OUR GRAND JURY PROCEDURE HERE AND
19 PROCEDURES YOU MAY BE FAMILIAR WITH HAVING SERVED ON STATE
20 TRIAL JURIES OR FEDERAL TRIAL JURIES OR EVEN ON THE STATE
21 GRAND JURY; HEARSAY TESTIMONY, THAT IS, TESTIMONY AS TO FACTS
22 NOT PERSONALLY KNOWN BY THE WITNESS, BUT WHICH THE WITNESS HAS
23 BEEN TOLD OR RELATED BY OTHER PERSONS MAY BE DEEMED BY YOU
24 PERSUASIVE AND MAY PROVIDE A BASIS FOR RETURNING AN INDICTMENT
25 AGAINST AN ACCUSED.

1 WHAT I MEAN BY THAT IS IF IT'S A FULL-BLOWN TRIAL
2 WHERE THE RULES OF EVIDENCE APPLY -- AND ALL OF US ARE
3 FAMILIAR WITH THIS TERM "HEARSAY EVIDENCE." GENERALLY, IT
4 FORBIDS SOMEBODY FROM REPEATING WHAT SOMEONE ELSE TOLD THEM
5 OUTSIDE OF COURT. OH, THERE'S A MILLION EXCEPTIONS TO THE
6 HEARSAY RULE, BUT THAT'S THE GIST OF THE RULE.

7 USUALLY, WE INSIST ON THE SPEAKER OF THE WORDS TO
8 COME IN SO THAT WE CAN KNOW THE CONTEXT OF IT. THAT RULE
9 DOESN'T APPLY IN THE GRAND JURY CONTEXT. BECAUSE IT'S A
10 PRELIMINARY PROCEEDING, BECAUSE ULTIMATELY GUILT OR INNOCENCE
11 IS NOT BEING DETERMINED, THE EVIDENTIARY STANDARDS ARE
12 RELAXED. THE PROSECUTORS ARE ENTITLED TO PUT ON HEARSAY
13 EVIDENCE.

14 HOW DOES THAT PLAY OUT IN REAL LIFE? WELL, YOU'RE
15 GOING TO BE HEARING A LOT OF BORDER TYPE CASES. IT DOESN'T
16 MAKE SENSE, IT'S NOT EFFICIENT, IT'S NOT COST-EFFECTIVE TO
17 PULL ALL OF OUR BORDER GUARDS OFF THE BORDER TO COME UP AND
18 TESTIFY. WHO IS LEFT GUARDING THE BORDER, THEN?

19 WHAT THEY'VE DONE IN THE BORDER CASES IN PARTICULAR
20 IF THEY USUALLY HAVE A SUMMARY WITNESS; A WITNESS FROM, FOR
21 EXAMPLE, BORDER PATROL OR CUSTOMS WHO WILL TALK TO THE PEOPLE
22 OR READ THE REPORTS OF THE PEOPLE WHO ACTUALLY MADE THE
23 ARREST. THAT PERSON WILL COME IN AND TESTIFY ABOUT WHAT
24 HAPPENED. THE PERSON WON'T HAVE FIRST-HAND KNOWLEDGE, BUT
25 THEY'LL BE RELIABLY INFORMED BY THE PERSON WITH FIRST-HAND

1 KNOWLEDGE OF WHAT OCCURRED, AND THEY'LL BE THE WITNESS BEFORE
2 THE GRAND JURY.

3 YOU SHOULD EXPECT AND COUNT ON THE FACT THAT YOU'RE
4 GOING TO HEAR EVIDENCE IN THE FORM OF HEARSAY THAT WOULD NOT
5 BE ADMISSIBLE IF THE CASE GOES FORWARD TO TRIAL, BUT IS
6 ADMISSIBLE AT THE GRAND JURY STAGE.

7 AFTER YOU'VE HEARD ALL OF THE EVIDENCE THAT THE U.S.
8 ATTORNEY INTENDS TO PRESENT OR THAT YOU WANT TO HEAR IN A
9 PARTICULAR MATTER, YOU'RE THEN CHARGED WITH THE OBLIGATION OF
10 DELIBERATING TO DETERMINE WHETHER THE ACCUSED PERSON OUGHT TO
11 BE INDICTED. NO ONE OTHER THAN YOUR OWN MEMBERS, THE MEMBERS
12 OF THE GRAND JURY, IS TO BE PRESENT IN THE GRAND JURY ROOM
13 WHILE YOU'RE DELIBERATING.

14 WHAT THAT MEANS IS THE COURT REPORTER, THE ASSISTANT
15 U.S. ATTORNEY, ANYONE ELSE, THE INTERPRETER WHO MAY HAVE BEEN
16 PRESENT TO INTERPRET FOR A WITNESS, MUST GO OUT OF THE ROOM,
17 AND THE PROCEEDING MUST GO FORWARD WITH ONLY GRAND JURORS
18 PRESENT DURING THE DELIBERATION AND VOTING ON AN INDICTMENT.

19 YOU HEARD ME EXPLAIN EARLIER THAT AT VARIOUS TIMES
20 DURING THE PRESENTATION OF MATTERS BEFORE YOU, OTHER PEOPLE
21 MAY BE PRESENT IN THE GRAND JURY. THIS IS PERFECTLY
22 ACCEPTABLE. THE RULE THAT I HAVE JUST READ TO YOU ABOUT YOUR
23 PRESENCE ALONE IN THE GRAND JURY ROOM APPLIES ONLY DURING
24 DELIBERATION AND VOTING ON INDICTMENTS.

25 TO RETURN AN INDICTMENT CHARGING SOMEONE WITH AN

1 OFFENSE, IT'S NOT NECESSARY, AS I MENTIONED MANY TIMES, THAT
2 YOU FIND PROOF BEYOND A REASONABLE DOUBT. THAT'S THE TRIAL
3 STANDARD, NOT THE GRAND JURY STANDARD. YOUR TASK IS TO
4 DETERMINE WHETHER THE GOVERNMENT'S EVIDENCE, AS PRESENTED TO
5 YOU, IS SUFFICIENT TO CONCLUDE THAT THERE'S PROBABLE CAUSE TO
6 BELIEVE THAT THE ACCUSED IS GUILTY OF THE PROPOSED OR CHARGED
7 OFFENSE.

8 I EXPLAINED TO YOU WHAT THAT STANDARD MEANS. LET
9 ME, AT THE RISK OF BORING YOU, TELL YOU ONE MORE TIME.

10 PROBABLE CAUSE MEANS THAT YOU HAVE AN HONESTLY HELD
11 CONSCIENTIOUS BELIEF AND THAT THE BELIEF IS REASONABLE THAT A
12 FEDERAL CRIME WAS COMMITTED AND THAT THE PERSON TO BE INDICTED
13 WAS SOMEHOW ASSOCIATED WITH THE COMMISSION OF THAT CRIME.
14 EITHER THEY COMMITTED IT THEMSELVES OR THEY HELPED SOMEONE
15 COMMIT IT OR THEY WERE PART OF A CONSPIRACY, AN ILLEGAL
16 AGREEMENT, TO COMMIT THAT CRIME.

17 TO PUT IT ANOTHER WAY, YOU SHOULD VOTE TO INDICT
18 WHEN THE EVIDENCE PRESENTED TO YOU IS SUFFICIENTLY STRONG TO
19 WARRANT A REASONABLE PERSON TO BELIEVE THAT THE ACCUSED IS
20 PROBABLY GUILTY OF THE OFFENSE WHICH IS PROPOSED.

21 EACH GRAND JUROR HAS THE RIGHT TO EXPRESS VIEWS ON
22 THE MATTER UNDER CONSIDERATION. AND ONLY AFTER ALL GRAND
23 JURORS HAVE BEEN GIVEN A FULL OPPORTUNITY TO BE HEARD SHOULD
24 YOU VOTE ON THE MATTER BEFORE YOU. YOU MAY DECIDE AFTER
25 DELIBERATION AMONG YOURSELVES THAT YOU NEED MORE EVIDENCE,

1 THAT MORE EVIDENCE SHOULD BE CONSIDERED BEFORE A VOTE IS
2 TAKEN. IN SUCH CASES, THE U.S ATTORNEY OR THE ASSISTANT U.S.
3 ATTORNEY CAN BE DIRECTED TO SUBPOENA ADDITIONAL DOCUMENTS OR
4 WITNESSES FOR YOU TO CONSIDER IN ORDER TO MAKE YOUR
5 DETERMINATION.

6 WHEN YOU'VE DECIDED TO VOTE, THE FOREPERSON SHOULD
7 KEEP A RECORD OF THE VOTE. THAT RECORD SHOULD BE FILED WITH
8 THE CLERK OF THE COURT. THE RECORD DOESN'T INCLUDE THE NAMES
9 OF THE JURORS OR HOW THEY VOTED, BUT ONLY THE NUMBER OF VOTES
10 FOR THE INDICTMENT. SO IT'S AN ANONYMOUS VOTE. YOU'LL KNOW
11 AMONG YOURSELVES WHO VOTED WHICH WAY, BUT THAT INFORMATION
12 DOES NOT GET CAPTURED OR RECORDED, JUST THE NUMBER OF PEOPLE
13 VOTING FOR INDICTMENT.

14 IF 12 OR MORE MEMBERS OF THE GRAND JURY AFTER
15 DELIBERATION BELIEVE THAT AN INDICTMENT IS WARRANTED, THEN
16 YOU'LL REQUEST THE UNITED STATES ATTORNEY TO PREPARE A FORMAL
17 WRITTEN INDICTMENT IF ONE'S NOT ALREADY BEEN PREPARED AND
18 PRESENTED TO YOU. IN MY EXPERIENCE, MOST OF THE TIME THE U.S.
19 ATTORNEY WILL SHOW UP WITH THE WITNESSES AND WILL HAVE THE
20 PROPOSED INDICTMENT WITH THEM. SO YOU'LL HAVE THAT TO
21 CONSIDER. YOU'LL KNOW EXACTLY WHAT THE PROPOSED CHARGES ARE.

22 THE INDICTMENT WILL SET FORTH THE DATE AND THE PLACE
23 OF THE ALLEGED OFFENSE AND THE CIRCUMSTANCES THAT THE U.S.
24 ATTORNEY BELIEVES MAKES THE CONDUCT CRIMINAL. IT WILL
25 IDENTIFY THE CRIMINAL STATUTES THAT HAVE ALLEGEDLY BEEN

1 VIOLATED.

2 THE FOREPERSON, UPON THE GRAND JURY VOTING TO RETURN
3 THE INDICTMENT, WILL THEN ENDORSE OR SIGN THE INDICTMENT,
4 WHAT'S CALLED A TRUE BILL OF INDICTMENT. THERE'S A SPACE
5 PROVIDED BY THE WORD -- OR FOLLOWED BY THE WORD "FOREPERSON."
6 THE FOREPERSON IS TO SIGN THE INDICTMENT IF THE GRAND JURY
7 BELIEVES THAT THERE'S PROBABLE CAUSE. A TRUE BILL SIGNIFIES
8 THAT 12 OR MORE GRAND JURORS HAVE AGREED THAT THE CASE OUGHT
9 TO GO FORWARD WITH PROBABLE CAUSE TO BELIEVE THAT THE PERSON
10 PROPOSED FOR THE CHARGE IS GUILTY OF THE CRIME.

11 IT'S THE DUTY OF THE FOREPERSON TO ENDORSE OR SIGN
12 EVERY INDICTMENT VOTED ON BY AT LEAST 12 MEMBERS EVEN IF THE
13 FOREPERSON HAS VOTED AGAINST RETURNING THE INDICTMENT. SO IF
14 YOU'VE BEEN DESIGNATED A FOREPERSON OR AN ASSISTANT
15 FOREPERSON, EVEN IF YOU VOTED THE OTHER WAY OR YOU'RE
16 OUT-VOTED, IF THERE'S AT LEAST 12 WHO VOTED FOR THE
17 INDICTMENT, THEN YOU MUST SIGN THE INDICTMENT.

18 IF YOU WERE THE 12 MEMBERS OF THE GRAND JURY WHO
19 VOTED IN FAVOR OF THE INDICTMENT, THEN THE FOREPERSON WILL
20 ENDORSE THE INDICTMENT WITH THESE WORDS: "NOT A TRUE BILL."
21 THEY'LL RETURN IT TO THE COURT. THE COURT WILL IMPOUND IT.

22 THE INDICTMENTS WHICH HAVE BEEN ENDORSED AS A TRUE
23 BILL ARE PRESENTED EITHER TO ONE OF OUR MAGISTRATE JUDGES OR
24 TO A DISTRICT JUDGE IN OPEN COURT BY YOUR FOREPERSON AT THE
25 CONCLUSION OF EACH SESSION OF THE GRAND JURY. THIS IS THE

1 PROCEDURE THAT YOU HEARD ME ALLUDE TO. IN THE ABSENCE OF THE
2 FOREPERSON, THE DEPUTY FOREPERSON SHALL PERFORM ALL THE
3 FUNCTIONS AND DUTIES OF THE FOREPERSON.

4 LET ME EMPHASIZE AGAIN IT'S EXTREMELY IMPORTANT FOR
5 THOSE OF YOU WHO ARE GRAND JURORS TO REALIZE THAT UNDER OUR
6 CONSTITUTION, THE GRAND JURY IS AN INDEPENDENT BODY. IT'S
7 INDEPENDENT OF THE UNITED STATES ATTORNEY. IT'S NOT AN ARM OR
8 AN AGENT OF FEDERAL BUREAU OF INVESTIGATION OF THE DRUG
9 ENFORCEMENT ADMINISTRATION, THE IRS, OR ANY OTHER GOVERNMENT
10 AGENCY CHARGED WITH PROSECUTING THE CRIME.

11 I USED THE CHARACTERIZATION EARLIER THAT YOU STAND
12 AS A BUFFER BETWEEN OUR GOVERNMENT'S ABILITY TO ACCUSE SOMEONE
13 OF A CRIME AND THEN PUTTING THAT PERSON THROUGH THE BURDEN OF
14 STANDING TRIAL. YOU ACT AS AN INDEPENDENT BODY OF CITIZENS.

15 IN RECENT YEARS, THERE HAS BEEN CRITICISM OF THE
16 INSTITUTION OF THE GRAND JURY. THE CRITICISM GENERALLY IS THE
17 GRAND JURY ACTS AS RUBBER STAMPS AND APPROVES PROSECUTIONS
18 THAT ARE BROUGHT BY THE GOVERNMENT WITHOUT THOUGHT.

19 INTERESTINGLY ENOUGH, IN MY DISCUSSION WITH
20 PROSPECTIVE GRAND JURORS, WE HAD ONE FELLOW WHO SAID, "YEAH,
21 THAT'S THE WAY I THINK IT OUGHT TO BE." WELL, THAT'S NOT THE
22 WAY IT IS. AS A PRACTICAL MATTER, YOU WILL WORK CLOSELY WITH
23 GOVERNMENT LAWYERS. THE U.S. ATTORNEY AND THE ASSISTANT U.S.
24 ATTORNEYS WILL PROVIDE YOU WITH IMPORTANT SERVICES AND HELP
25 YOU FIND YOUR WAY WHEN YOU'RE CONFRONTED WITH COMPLEX LEGAL

1 MATTERS. IT'S ENTIRELY PROPER THAT YOU SHOULD RECEIVE THE
2 ASSISTANCE FROM THE GOVERNMENT LAWYERS.

3 BUT AT THE END OF THE DAY, THE DECISION ABOUT
4 WHETHER A CASE GOES FORWARD AND AN INDICTMENT SHOULD BE
5 RETURNED IS YOURS AND YOURS ALONE. IF PAST EXPERIENCE IS ANY
6 INDICATION OF WHAT TO EXPECT IN THE FUTURE, THEN YOU CAN
7 EXPECT THAT THE U.S. ATTORNEYS THAT WILL APPEAR IN FRONT OF
8 YOU WILL BE CANDID, THEY'LL BE HONEST, THAT THEY'LL ACT IN
9 GOOD FAITH IN ALL MATTERS PRESENTED TO YOU.

10 HOWEVER, AS I SAID, ULTIMATELY YOU HAVE TO DEPEND ON
11 YOUR INDEPENDENT JUDGMENT IN MAKING THE DECISION THAT YOU ARE
12 CHARGED WITH MAKING AS GRAND JURORS. YOU'RE NOT AN ARM OF THE
13 U.S. ATTORNEY'S OFFICE. YOU'RE NOT AN ARM OF ANY GOVERNMENT
14 AGENCY. THE GOVERNMENT'S LAWYERS ARE PROSECUTORS, AND YOU'RE
15 NOT.

16 IF THE FACTS SUGGEST TO YOU THAT YOU SHOULD NOT
17 INDICT, THEN YOU SHOULD NOT DO SO EVEN IN THE FACE OF
18 OPPOSITION OR STATEMENTS OR ARGUMENTS FROM ONE OF THE
19 ASSISTANT UNITED STATES ATTORNEYS. YOU SHOULD NOT SURRENDER
20 AN HONESTLY OR CONSCIOUSLY HELD BELIEF WITHOUT THE WEIGHT OF
21 THE EVIDENCE AND SIMPLY DEFER TO THE U.S. ATTORNEY. THAT'S
22 YOUR DECISION TO MAKE.

23 JUST AS YOU MUST MAINTAIN YOUR INDEPENDENCE IN YOUR
24 DEALINGS WITH GOVERNMENT LAWYERS, YOUR DEALINGS WITH THE COURT
25 MUST BE ON A FORMAL BASIS, ALSO. IF YOU HAVE A QUESTION FOR

1 THE COURT OR A DESIRE TO MAKE A PRESENTMENT OR A RETURN OF AN
2 INDICTMENT TO THE COURT, THEN YOU MAY CONTACT ME THROUGH MY
3 CLERK. YOU'LL BE ABLE TO ASSEMBLE IN THE COURTROOM OFTENTIMES
4 FOR THESE PURPOSES.

5 LET ME TELL YOU ALSO THAT EACH GRAND JUROR IS
6 DIRECTED TO REPORT IMMEDIATELY TO THE COURT ANY ATTEMPT BY
7 ANYBODY UNDER ANY PRETENSE WHATSOEVER TO ADDRESS YOU OR
8 CONTACT YOU FOR THE PURPOSE OF TRYING TO GAIN INFORMATION
9 ABOUT WHAT'S GOING ON IN FRONT OF THE GRAND JURY. THAT SHOULD
10 NOT HAPPEN. IF IT DOES HAPPEN, I SHOULD BE INFORMED OF THAT
11 IMMEDIATELY BY ANY OF YOU, COLLECTIVELY OR INDIVIDUALLY. IF
12 ANY PERSON CONTACTS YOU OR ATTEMPTS TO INFLUENCE YOU IN ANY
13 MANNER IN CARRYING OUT YOUR DUTIES AS A GRAND JUROR, LET ME
14 KNOW ABOUT IT.

15 LET ME TALK A LITTLE BIT MORE ABOUT THE OBLIGATION
16 OF SECRECY, WHICH I'VE MENTIONED AND ALLUDED TO. AS I TOLD
17 YOU BEFORE, THE HALLMARK OF THE GRAND JURY, PARTICULARLY OUR
18 FEDERAL GRAND JURY, IS THAT IT OPERATES SECRETLY. IT OPERATES
19 IN SECRECY, AND ITS PROCEEDINGS ARE ENTIRELY SECRET.

20 YOUR PROCEEDINGS AS GRAND JURORS ARE ALWAYS SECRET,
21 AND THEY MUST REMAIN SECRET PERMANENTLY UNLESS AND UNTIL THE
22 COURT DETERMINES OTHERWISE. YOU CAN'T RELATE TO YOUR FAMILY,
23 THE NEWS MEDIA, TELEVISION REPORTERS, OR TO ANYONE WHAT
24 HAPPENED IN FRONT OF THE GRAND JURY. IN FACT, TO DO SO IS TO
25 COMMIT A CRIMINAL OFFENSE. YOU COULD BE HELD CRIMINALLY

1 LIABLE FOR REVEALING WHAT OCCURRED IN FRONT OF THE GRAND JURY.

2 THERE ARE SEVERAL IMPORTANT REASONS WHY WE DEMAND
3 SECRECY IN THE INSTITUTION OF THE GRAND JURY. FIRST -- AND I
4 MENTIONED THIS, AND THIS IS OBVIOUS -- THE PREMATURE
5 DISCLOSURE OF INFORMATION THAT THE GRAND JURY IS ACTING ON
6 COULD VERY WELL FRUSTRATE THE ENDS OF JUSTICE IN PARTICULAR
7 CASES. IT MIGHT GIVE AN OPPORTUNITY FOR SOMEONE WHO'S ACCUSED
8 OF A CRIME TO ESCAPE OR BECOME A FUGITIVE OR TO DESTROY
9 EVIDENCE THAT MIGHT OTHERWISE BE UNCOVERED LATER ON. YOU
10 DON'T WANT TO DO THAT.

11 IN THE COURSE OF AN INVESTIGATION, IT'S ABSOLUTELY
12 IMPERATIVE THAT THE INVESTIGATION AND THE FACTS OF THE
13 INVESTIGATION REMAIN SECRET, AND YOU SHOULD KEEP THAT FOREMOST
14 IN YOUR MIND. ALSO, IF THE TESTIMONY OF A WITNESS IS
15 DISCLOSED, THE WITNESS MAY BE SUBJECT TO INTIMIDATION OR
16 SOMETIMES RETALIATION OR BODILY INJURY BEFORE THE WITNESS IS
17 ABLE TO TESTIFY. IT IS SOMETHING THAT THE LAW ENFORCEMENT --
18 IT'S SOMETIMES THE CASE THAT LAW ENFORCEMENT WILL TELL A
19 WITNESS WHO IS COOPERATING WITH AN INVESTIGATION THAT THEIR
20 SECRECY IS GUARANTEED. IT SOMETIMES TAKES THAT KIND OF
21 ASSURANCE FROM THE POLICE OR LAW ENFORCEMENT AGENTS TO GET A
22 WITNESS TO TELL WHAT THEY KNOW. AND THAT GUARANTEE CAN ONLY
23 BE SECURED IF YOU MAINTAIN THE OBLIGATION OF SECRECY.

24 THE GRAND JURY IS FORBIDDEN BY LAW FROM DISCLOSING
25 ANY INFORMATION ABOUT THE GRAND JURY PROCESS WHATSOEVER. IT'S

1 ON THE BASIS SOMETIMES OF REPRESENTATIONS LIKE THAT RELUCTANT
2 WITNESSES DO COME FORWARD. AGAIN, IT UNDERSCORES THE
3 IMPORTANCE OF SECRECY.

4 AS I'VE ALSO MENTIONED, THE REQUIREMENT OF SECRECY
5 PROTECTS INNOCENT PEOPLE WHO MAY HAVE COME UNDER
6 INVESTIGATION, BUT WHO ARE CLEARED BY THE ACTIONS OF THE GRAND
7 JURY. IT'S A TERRIBLE THING TO BE IMPROPERLY ACCUSED OF A
8 CRIME. IT'S LIKE A SCARLET LETTER THAT PEOPLE SOMETIMES WEAR
9 FOREVER. IT'S WORSE IF THE CRIME OR THE ACCUSATION NEVER
10 BECOMES FORMAL. JUST THE IDEA THAT SOMEONE IS UNDER
11 INVESTIGATION CAN HAVE DISASTROUS CONSEQUENCES FOR THAT PERSON
12 OR HIS OR HER BUSINESS OR HIS OR HER FAMILY. THIS IS ANOTHER
13 IMPORTANT REASON WHY THE GRAND JURY PROCEEDINGS MUST REMAIN
14 SECRET.

15 IN THE EYES OF SOME PEOPLE, INVESTIGATION BY THE
16 GRAND JURY ALONE CARRIES WITH IT THE STIGMA OR SUGGESTION OF
17 GUILT. SO GREAT INJURY CAN BE DONE TO A PERSON'S GOOD NAME
18 EVEN THOUGH ULTIMATELY YOU DECIDE THAT THERE'S NO EVIDENCE
19 SUPPORTING AN INDICTMENT OF THE PERSON.

20 TO ENSURE THE SECRECY OF THE GRAND JURY PROCEEDINGS,
21 THE LAW PROVIDES THAT ONLY AUTHORIZED PEOPLE MAY BE IN THE
22 GRAND JURY ROOM WHILE EVIDENCE IS BEING PRESENTED. AS I'VE
23 MENTIONED TO YOU NOW SEVERAL TIMES, THE ONLY PEOPLE WHO MAY BE
24 PRESENT DURING THE FUNCTIONING OF THE GRAND JURY ARE THE GRAND
25 JURORS THEMSELVES, THE UNITED STATES ATTORNEY OR AN ASSISTANT

1 WHO'S PRESENTING THE CASE, A WITNESS WHO IS THEN UNDER
2 EXAMINATION, A COURT REPORTER, AND AN INTERPRETER, IF
3 NECESSARY. ALL THE OTHERS EXCEPT THE GRAND JURORS GO OUT
4 DURING THE DELIBERATION AND VOTING.

5 YOU MAY DISCLOSE TO THE U.S. ATTORNEY WHO IS
6 ASSISTING THE GRAND JURY CERTAIN INFORMATION. AS I SAID, IF
7 YOU HAVE QUESTIONS, IF GRAND JURORS HAVE QUESTIONS THAT THEY
8 WANT ANSWERED, OBVIOUSLY THAT INFORMATION IS TO BE CONVEYED TO
9 THE U.S. ATTORNEY TO GET THE QUESTIONS ANSWERED.

10 BUT YOU SHOULD NOT DISCLOSE THE CONTEXT OF YOUR
11 DELIBERATIONS OR THE VOTE OF ANY PARTICULAR GRAND JUROR TO
12 ANYONE, EVEN THE GOVERNMENT LAWYERS, ONCE THE VOTE HAS BEEN
13 DONE. THAT'S ONLY THE BUSINESS OF THE GRAND JURY. IN OTHER
14 WORDS, YOU'RE NOT TO INFORM THE GOVERNMENT LAWYER WHO VOTED
15 ONE WAY ON THE INDICTMENT AND WHO VOTED THE OTHER WAY.

16 LET ME CONCLUDE NOW -- I APPRECIATE YOUR PATIENCE,
17 AND IT'S BEEN A LONG SESSION THIS MORNING -- BY SAYING THAT
18 THE IMPORTANCE OF THE SERVICE YOU PERFORM IS DEMONSTRATED BY
19 THE VERY IMPORTANT AND COMPREHENSIVE OATH WHICH YOU TOOK A
20 SHORT WHILE AGO. IT'S AN OATH THAT IS ROOTED IN OUR HISTORY
21 AS A COUNTRY. THOUSANDS OF PEOPLE BEFORE YOU HAVE TAKEN A
22 SIMILAR OATH. AND AS GOOD CITIZENS, YOU SHOULD BE PROUD TO
23 HAVE BEEN SELECTED TO ASSIST IN THE ADMINISTRATION OF JUSTICE.

24 IT HAS BEEN MY PLEASURE TO MEET YOU. I WOULD BE
25 HAPPY TO SEE YOU IN THE FUTURE IF THE NEED ARISES. AT THIS

1 POINT, THE U.S. ATTORNEY, MR. ROBINSON, WILL ASSIST YOU IN
2 FURTHER ORGANIZATION. SO THIS PART OF THE ADMINISTRATION OF
3 YOUR RESPONSIBILITY AS GRAND JURORS INVOLVING THE COURT IS
4 OVER.

5 IT MIGHT BE APPROPRIATE TO TAKE A BREAK BEFORE WE GO
6 ON TO THE NEXT PROCEEDING. I'VE HELD THESE FOLKS FOR A LONG
7 TIME.

8 LADIES AND GENTLEMEN, MY GREAT PLEASURE TO MEET ALL
9 OF YOU. GOOD LUCK WITH YOUR GRAND JURY SERVICE. I THINK
10 YOU'LL FIND IT REWARDING AND INTERESTING AND COMPELLING.

11 --000--
12
13
14

15 I HEREBY CERTIFY THAT THE TESTIMONY
16 ADDUCED IN THE FOREGOING MATTER IS
17 A TRUE RECORD OF SAID PROCEEDINGS.
18
19

20 _____
21
22
23
24
25

EXHIBIT "B"

Reporter's Transcript of Proceedings

January 11, 2007

In Re: The Impanelment of Grand

Jury Panels 07-1 and 07-2

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3
4

5 IN RE: THE IMPANELMENT)
6 OF GRAND JURY PANELS 07-1 AND)
7 07-2)
8)
9)
10)

11 BEFORE THE HONORABLE LARRY ALAN BURNS
12 UNITED STATES DISTRICT JUDGE
13

14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 WEDNESDAY, JANUARY 11, 2007
16
17
18
19
20

21 COURT REPORTER:
22

EVA OEMICK
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UNITED STATES COURTHOUSE
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23
24
25

1 SAN DIEGO, CALIFORNIA-WEDNESDAY, JANUARY 11, 2007-10:45 A.M.

2 MR. HAMRICK: YOU AND EACH OF YOU DO SOLEMNLY SWEAR
3 OR AFFIRM THAT YOU WILL GIVE TRUE ANSWERS TO ALL QUESTIONS
4 THAT WILL BE PUT TO YOU TOUCHING ON YOUR QUALIFICATION TO
5 SERVE AS A GRAND JUROR DURING THIS SESSION OF COURT, SO HELP
6 YOU?

7 (ALL GRAND JURORS RESPOND AFFIRMATIVELY)

8 MR. HAMRICK: THANK YOU. PLEASE BE SEATED AND COME
9 TO ORDER.

10 THE COURT: LADIES AND GENTLEMEN, GOOD MORNING AND
11 WELCOME TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
12 DISTRICT OF CALIFORNIA. YOU'RE HERE TODAY IN CONNECTION WITH
13 OUR EFFORT TO IMPANEL GRAND JURIES. I KNOW ALL OF YOU HAVE
14 SEEN THE FILM ABOUT THE FUNCTION OF THE GRAND JURY. I'M GOING
15 TO TALK A LITTLE BIT MORE ABOUT THAT LATER IN MY REMARKS AND
16 MY INTERACTIONS WITH YOU TODAY.

17 WE'RE ESSENTIALLY LOOKING FOR PEOPLE WHO CAN FAIRLY
18 AND CONSCIENTIOUSLY EVALUATE A SET OF FACTS AND MAKE AN
19 IMPORTANT DECISION ABOUT WHETHER CASES SHOULD MOVE FORWARD TO
20 TRIAL. THAT'S THE FUNCTION OF THE GRAND JURY. YOU'RE TO WEED
21 OUT THE GROUNDLESS CHARGES FROM THOSE THAT HAVE MERIT,
22 ALTHOUGH ACKNOWLEDGING THAT YOU'RE NOT MAKING A FINAL DECISION
23 ON WHETHER A PERSON IS GUILTY OR NOT OF A CRIMINAL CHARGE.
24 BUT THE IDEA OF PUTTING A PERSON THROUGH A TRIAL OF ITSELF IS
25 A SIGNIFICANT RESPONSIBILITY, AND THAT'S THE RESPONSIBILITY

1 THAT WE CALL ON YOU TO FULFILL.

2 MY NAME IS LARRY BURNS. I'M THE JURY JUDGE. I'LL
3 TELL YOU A LITTLE BIT ABOUT OUR COURT.

4 WE HAVE 12 ACTIVE JUDGES HERE NOW AND FIVE SENIOR
5 JUDGES. WHEN A FEDERAL JUDGE TURNS 65 AND ASSUMING THEIR AGE
6 AND THEIR YEARS OF SERVICE ADD UP TO 80, THEY CAN GO SENIOR
7 AND WORK A REDUCED CASELOAD. BUT OUR SENIORS IN OUR VERY BUSY
8 DISTRICT WORK VERY, VERY HARD.

9 EACH OF US, EACH OF OUR JUDGES HERE, WAS APPOINTED
10 BY ONE OF THE PRESIDENTS OF THE UNITED STATES AND CONFIRMED BY
11 THE SENATE. WE HAVE A VERY BUSY, ACTIVE DISTRICT HERE. OUR
12 PROXIMITY TO THE BORDER GIVES US LOTS OF CASES. I THINK IF
13 YOU SERVE ON THE GRAND JURY OR IF YOU'VE BEEN HERE BEFORE
14 SERVING AS A TRIAL JUROR, YOU'RE AWARE THAT PEOPLE TRY TO
15 BRING THE STRANGEST THINGS ACROSS THE BORDER, A LOT OF WHICH
16 ARE PROHIBITED; PEOPLE, DRUGS, PARROTS, KNOCK-OFF CALVIN KLEIN
17 JEANS. ALL THOSE THINGS ARE NOW IMPLICATED BY THE FEDERAL
18 LAWS.

19 LET ME INTRODUCE THE CLERK OF OUR COURT,
20 MR. HAMRICK. HE'S THE THAT CALLED COURT TO ORDER.

21 WE ALSO HAVE SOME REPRESENTATIVES HERE FROM THE
22 UNITED STATES ATTORNEY'S OFFICE. THEY WORK VERY CLOSELY WITH
23 THE GRAND JURY. THEY'RE THE ONES THAT DECIDE, IN THE FIRST
24 INSTANCE, WHETHER A CASE SHOULD BE BROUGHT. IT'S SUBJECT TO
25 THE APPROVAL OF THE GRAND JURY THAT THE CASE CAN GO FORWARD.

COMPUTER-AIDED TRANSCRIPTION

1 IF YOU'RE CHOSEN AS A GRAND JUROR, YOU'RE GOING TO
2 BE HEARING, BY AND LARGE, CASES PRESENTED BY THE ASSISTANT
3 UNITED STATES ATTORNEYS WHO WORK IN OUR DISTRICT.

4 REPRESENTING THAT OFFICE IS MR. TODD ROBINSON. HE'S
5 A VERY FINE LAWYER. I'VE KNOWN HIM FOR YEARS. HE'S A FINE
6 TRIAL LAWYER, VERY SMART FELLOW.

7 AND [REDACTED] WHO'S BEEN WITH THE U.S.
8 ATTORNEY'S OFFICE FOR SOME TIME, ALSO, SHE'S THE GRAND JURY
9 ASSISTANT. YOU'LL BE GETTING TO KNOW HER IN WORKING WITH HER.

10 AND THEN WHOSE [REDACTED] OUR JURY
11 ADMINISTRATOR.

12 AND THEN FINALLY I THINK MOST OF YOU HAVE MET [REDACTED]

13 [REDACTED] SHE'S OUR JURY CLERK.

14 AND THEN THIS YOUNG WOMAN HERE, EVA OEMICK, SHE'S MY
15 COURT REPORTER. YOU'LL SEE HER OCCASIONALLY WHEN YOU COME
16 DOWN TO RETURN GRAND JURY INDICTMENTS. AFTER YOU DECIDE WHICH
17 CASES SHOULD GO FORWARD, USUALLY THE FOREPERSON OR THE DEPUTY
18 FOREPERSON WILL COME DOWN. SOMETIMES TO MY COURT; SOMETIMES
19 TO OTHERS. BUT THAT'S A REPORTED PROCEEDING.

20 SO WE'RE GLAD TO HAVE YOU HERE TODAY. THIS IS
21 IMPORTANT SERVICE, AND WE APPRECIATE YOU BEING HERE. THE MOST
22 FAMILIAR RESPONSE I GET FROM FOLKS CALLED IN FOR JURY SERVICE
23 OR GRAND JURY SERVICE IS "I WISH I WAS SOMEWHERE ELSE."

24 AND I UNDERSTAND THE SENTIMENT. WE ALL LEAD VERY
25 BUSY LIVES. THIS IS REALLY IMPORTANT SERVICE. IT'S LIKE

1 TRIAL JURY SERVICE. I TELL OUR TRIAL JURORS THAT IF YOU WERE
2 IN THE POSITION OF A DEFENDANT IN A CASE OR A PLAINTIFF IN A
3 CIVIL CASE OR EVEN THE UNITED STATES GOVERNMENT,
4 MR. ROBINSON'S POSITION, YOU'D WANT THE CASE TO BE DECIDED BY
5 PEOPLE WHO HAVE A STAKE IN THE COMMUNITY, PEOPLE WHO ARE
6 FAIR-MINDED, PEOPLE WHO ARE CONSCIENTIOUS. THAT'S WHAT OUR
7 JURY SYSTEM IS ABOUT. OUR GRAND JURY SYSTEM DEPENDS ON THAT
8 AS WELL. WE WANT FAIR-MINDED PEOPLE TO MAKE THESE VERY
9 IMPORTANT DECISIONS.

10 SO WHILE I ACKNOWLEDGE AND I UNDERSTAND THAT YOU
11 LEAD VERY BUSY LIVES, WE APPRECIATE THE COMMITMENT THAT YOU
12 MAKE. OUR SYSTEM DEPENDS ON IT. AT SOME POINT, IF YOU COUNT
13 ON THE SYSTEM TO GIVE YOU JUSTICE, THEN YOU MUST BE PREPARED
14 TO MAKE THIS KIND OF COMMITMENT WHEN CALLED UPON TO DO IT. SO
15 AGAIN, I APPRECIATE YOU BEING HERE.

16 THAT SAID, WE'VE TRIED TO SCREEN THOSE PEOPLE
17 PREVIOUSLY WHO, IN THEIR QUESTIONNAIRES, TOLD US THAT THEY HAD
18 INSURMOUNTABLE PROBLEMS THAT WOULD PREVENT THEM FROM SERVING.
19 MY EXPERIENCE IS THAT BETWEEN THE TIME WE GET THE
20 QUESTIONNAIRES AND THE SESSION TODAY, THE SESSION WHERE WE
21 ACTUALLY SPEAK TO PEOPLE PERSONALLY, THAT SOMETIMES THERE'S
22 SOME ADDITIONAL PROBLEMS THAT ARISE THAT WEREN'T FORESEEN AND
23 WEREN'T KNOWN AT THE TIME ALL OF YOU FILLED OUT THE
24 QUESTIONNAIRES.

25 MADAM CLERK, IF YOU'LL CALL THE FIRST 23 NAMES.

1 THE CLERK: THIS IS THE PANEL 07-1, THE WEDNESDAY
2 PANEL.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 THE NEXT NAME HAS BEEN EXCUSED. I'LL DRAW A NEW
7 NAME.

8 NO. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 THE NEXT NAME HAS BEEN EXCUSED. I'LL DRAW ANOTHER
14 NAME RANDOMLY.

15 NO. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

COMPUTER-AIDED TRANSCRIPTION

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THE COURT: GOOD MORNING AGAIN.

6

7

WITH THE BASIC BIOGRAPHICAL INFORMATION.

8

WOULD YOU TELL US ABOUT YOURSELF, PLEASE.

9

PROSPECTIVE JUROR: MY NAME [REDACTED] I
LIVE IN [REDACTED] I'M A TEACHER. MY WIFE IS A [REDACTED] I HAVE
ONE ADULT CHILD. HE'S [REDACTED] I HAD
SOME EXPERIENCE IN THE STATE COURT. I WAS IN A TRIAL IN
NOVEMBER OR OCTOBER. YES, I CAN BE FAIR AND IMPARTIAL.

14

THE COURT: WHERE DO YOU TEACH?

15

PROSPECTIVE JUROR: [REDACTED] SCHOOL DISTRICT.

16

THE COURT: WHAT IS YOUR DISCIPLINE?

17

18

PROSPECTIVE JUROR: LANGUAGE, ARTS, SOCIAL
STUDIES.

19

20

21

22

23

THE COURT: I HAVE TWO SONS WHO [REDACTED]
[REDACTED] I DON'T LIVE IN [REDACTED] ANYMORE. I LIVED
THERE 24 YEARS. AND AS SOON AS THE YOUNGEST ONE GRADUATED,
TWO WEEKS LATER I MOVED CLOSER TO DOWNTOWN BECAUSE THE DRIVE
[REDACTED] WAS KILLING ME.

24

HOW LONG HAVE YOU BEEN A TEACHER?

25

PROSPECTIVE JUROR: I STARTED AT [REDACTED] AND

1 I'VE BEEN AT [REDACTED] FOR 15 YEARS.

2 THE COURT: NICE TO HAVE YOU.

3 THERE'S A DIFFERENCE, OF COURSE, BETWEEN THE
4 FUNCTION OF THE GRAND JURY AND THE FUNCTION OF THE TRIAL JURY.
5 HERE THE STANDARD OF PROOF IS NOT PROOF BEYOND A REASONABLE
6 DOUBT BECAUSE THE GRAND JURY IS NOT MAKING AN ULTIMATE
7 DECISION ABOUT WHETHER SOMEONE IS GUILTY OR NOT OF THE CHARGE.
8 INSTEAD, THE GRAND JURY IS DETERMINING REALLY TWO FACTORS:

9 "DO WE HAVE A REASONABLE -- COLLECTIVELY, DO WE HAVE A
10 REASONABLE BELIEF THAT A CRIME WAS COMMITTED? AND SECOND, DO
11 WE HAVE A REASONABLE BELIEF THAT THE PERSON THAT THEY PROPOSE
12 THAT WE INDICT COMMITTED THE CRIME?"

13 IF THE ANSWER IS "YES" TO BOTH OF THOSE, THEN THE
14 CASE SHOULD MOVER FORWARD. IF THE ANSWER TO EITHER OF THE
15 QUESTIONS IS "NO," THEN THE GRAND JURY SHOULD HESITATE AND NOT
16 INDICT.

17 YOU UNDERSTAND THAT LEGAL DIFFERENCE BETWEEN GRAND
18 JURY FUNCTION AND TRIAL JURY FUNCTION?

19 PROSPECTIVE JUROR: YES, I DO.

20 THE COURT: THANK YOU, [REDACTED] I APPRECIATE
21 YOUR ANSWERS.

22 [REDACTED] TELL US ABOUT YOURSELF.

23 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
24 LIVE IN [REDACTED] I'M A MANAGER OF IMPLEMENTATIONS FOR A
25 SOFTWARE COMPANY. I'M NOT MARRIED. I HAVE NO CHILDREN. I'VE

1 SERVED AS A FEDERAL GRAND JUROR IN '99, I BELIEVE.

2 THE COURT: HERE IN THIS DISTRICT?

3 PROSPECTIVE JUROR: YES.

4 THE COURT: YOU'RE A VETERAN. YOU KNOW ALL ABOUT
5 THIS PROCESS.

6 PROSPECTIVE JUROR: CORRECT.

7 YES, I CAN FAIR.

8 THE COURT: ARE YOU UP TO THE TASK?

9 PROSPECTIVE JUROR: YES.

10 THE COURT: I THINK IT MIGHT BE INTERESTING TO THE
11 OTHER ASSEMBLED PEOPLE WHO HAVE NOT BEEN ON A GRAND JURY
12 BEFORE, DID YOU ENJOY YOUR PRIOR SERVICE?

13 PROSPECTIVE JUROR: I DID.

14 THE COURT: INTERESTING? LEARNED A LOT OF THINGS?

15 PROSPECTIVE JUROR: YES.

16 THE COURT: MOST PEOPLE WHO'VE SERVED ON THE GRAND
17 JURY TELL ME IT'S ONE OF THE BEST LEARNING EXPERIENCES OF
18 THEIR LIFE. THEY MEET INTERESTING PEOPLE. THEY DEAL WITH
19 INTERESTING ISSUES.

20 THANK YOU. I APPRECIATE YOUR ANSWERS. WELCOME
21 BACK.

22 [REDACTED]
23 PROSPECTIVE JUROR: [REDACTED] I LIVE IN [REDACTED]
24 [REDACTED] I'M A REGISTERED NURSE. I'M MARRIED,
25 AND MY HUSBAND IS A [REDACTED] I HAVE [REDACTED] ADULT CHILD

1 WHO'S IN HIS [REDACTED] I HAVE
2 EXPERIENCE AS A TRIAL JUROR IN MY MID-20'S. I COULD BE FAIR
3 IF SELECTED FOR A GRAND JURY.

4 THE COURT: YOU WERE IN YOUR MID-20'S OR YOU'VE
5 HEARD 25 CASES?

6 PROSPECTIVE JUROR: I WAS IN MY MID-20'S. A LONG
7 TIME AGO.

8 THE COURT: I ASKED [REDACTED] ABOUT THE
9 DIFFERENCE. ALL OF YOU, OF COURSE, HAVE SEEN THE ORIENTATION
10 TAPE ABOUT THE FUNCTION OF THE GRAND JURY.

11 YOU APPRECIATE THE DIFFERENCE IN THE FUNCTION
12 BETWEEN THE TWO ENTITIES, TRIAL JURIES AND GRAND JURIES?

13 PROSPECTIVE JUROR: YES.

14 THE COURT: YOU CAN CONSCIENTIOUSLY FULFILL THE JOB
15 OF BEING A GRAND JUROR SHOULD YOU BE ACCEPTED TO SIT ON THIS
16 PANEL?

17 PROSPECTIVE JUROR: YES, I CAN.

18 THE COURT: [REDACTED] GOOD MORNING.

19 PROSPECTIVE JUROR: GOOD MORNING.

20 MY NAME IS [REDACTED] I LIVE IN [REDACTED] I'M
21 RETIRED NOW SINCE JUNE OF LAST YEAR. I WAS A PRINCIPAL
22 RESEARCH TECHNICIAN FOR [REDACTED] I'VE BEEN MARRIED FOR
23 [REDACTED] YEARS. MY WIFE IS A [REDACTED] WE DON'T HAVE ANY
24 CHILDREN. AND I WAS ON A CIVIL REAL ESTATE TRIAL FOR A COUPLE
25 OF WEEKS MAYBE 10 OR 12 YEARS AGO. AND I CAN BE FAIR.

1 THE COURT: [REDACTED] AS YOU'VE HEARD ME ALLUDE TO,
2 THE GRAND JURY FUNCTION IS TO DETERMINE WHETHER THERE'S ENOUGH
3 EVIDENCE FOR A CASE TO GO FORWARD FOR A FULL-BLOWN TRIAL.
4 THAT'S A PRELIMINARY DECISION IN THE CRIMINAL JUSTICE PROCESS,
5 BUT IT'S AN IMPORTANT DECISION. SOMETIMES THE POWER TO CHARGE
6 SOMEBODY TO BRING AN INDICTMENT AGAINST SOMEBODY IS THE POWER
7 TO RUIN SOMEBODY.

8 SO WE WANT YOU TO LOOK AT THE CASES CAREFULLY AND
9 ANSWER THE TWO QUESTIONS THAT I MENTIONED TO [REDACTED]
10 "DO I HAVE A REASONABLE BELIEF THAT A FEDERAL CRIME WAS
11 COMMITTED? AND DO I HAVE A REASONABLE BELIEF, BASED ON THE
12 PRESENTATION OF EVIDENCE SO FAR, THAT THIS PERSON THEY WANT ME
13 TO INDICT HAD SOMETHING TO DO WITH THAT, EITHER COMMITTED IT
14 OR HELPED IN THE COMMISSION OF THE CRIME?"

15 CAN YOU MAKE DECISIONS SUCH AS THAT IF YOU WERE
16 IMPANELED AS A GRAND JUROR HERE?

17 PROSPECTIVE JUROR: YES.

18 THE COURT: THANK YOU.

19 [REDACTED] GOOD MORNING.

20 TELL US ABOUT YOURSELF.

21 PROSPECTIVE JUROR: I'M [REDACTED] I LIVE IN
22 [REDACTED] I WORK AS A SPEECH PATHOLOGIST. I'M NOT MARRIED. I
23 DON'T HAVE ADULT CHILDREN. I'VE BEEN ON THREE TRIAL JURIES
24 ACROSS THE STREET.

25 THE COURT: WHAT WAS YOUR MOST RECENT TRIAL JURY

1 SERVICE, HOW LONG AGO?

2 PROSPECTIVE JUROR: IN THE '80S.

3 AND I COULD BE A FAIR JUROR.

4 THE COURT: YOU MAKE THAT STATEMENT MINDFUL OF THE
5 QUESTIONS THAT I'VE PUT TO THE OTHER PROSPECTIVE GRAND JURORS?

6 PROSPECTIVE JUROR: YES.

7 THE COURT: THANK YOU, [REDACTED]

8 [REDACTED] GOOD MORNING.

9 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
10 LIVE IN [REDACTED] I'M A PRINCIPAL FOR AN ELEMENTARY SCHOOL.

11 I'M MARRIED, AND MY SPOUSE [REDACTED] I HAVE [REDACTED] ADULT

12 [REDACTED] SHE IS [REDACTED] I'VE SERVED AS A TRIAL JUROR
13 IN THE STATE COURT IN THE '80S. AND YES, I CAN BE FAIR.

14 THE COURT: DOES YOUR [REDACTED]

15 [REDACTED]

16 PROSPECTIVE JUROR: YES. SHE'S [REDACTED] Y.

17 THE COURT: [REDACTED]

18 WHAT IS THE NATURE OF HER [REDACTED]? DOES SHE [REDACTED]

19 [REDACTED]?

20 PROSPECTIVE JUROR: [REDACTED]

21 THE COURT: THANK YOU, [REDACTED]

22 [REDACTED]

23 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE

24 [REDACTED] I WORK FOR THE POST OFFICE. I'M MARRIED. MY

25 HUSBAND'S [REDACTED] MY [REDACTED] I ONLY HAVE [REDACTED] AND HE

1 WORKS FOR THE [REDACTED] I HAVE NO EXPERIENCE. YES, I CAN
2 BE FAIR.

3 THE COURT: THANK YOU, [REDACTED]
4 [REDACTED]

5 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
6 IN S [REDACTED] I'M A NURSE. I'M MARRIED TO [REDACTED]
7 I HAVE [REDACTED] CHILDREN, [REDACTED] AND [REDACTED] AND I'VE NEVER HAD ANY
8 EXPERIENCE AS A TRIAL JUROR.

9 THE COURT: YOU WATCHED OUR ORIENTATION FILM THIS
10 MORNING AND HAVE IN MIND THE DISTINCTION BETWEEN THE FUNCTION
11 OF THE GRAND JURY AND THE FUNCTION OF THE TRIAL JURY?

12 PROSPECTIVE JUROR: YES.

13 THE COURT: YOU'RE PREPARED TO SERVE THE FUNCTION OF
14 A GRAND JUROR?

15 PROSPECTIVE JUROR: I'LL TRY.

16 THE COURT: THANK YOU, [REDACTED]
17 [REDACTED]

18 PROSPECTIVE JUROR: HI. MY NAME IS [REDACTED]
19 I LIVE IN [REDACTED] I'M A SERVICE FOR THE SOCIAL SECURITY
20 ADMINISTRATION. I'M NOT MARRIED, BUT I'LL BE GETTING MARRIED
21 IN APRIL. I DON'T HAVE ANY CHILDREN. I DON'T HAVE ANY
22 EXPERIENCE AS A TRIAL JUROR. AND YES, I WILL BE FAIR.

23 THE COURT: [REDACTED] THANK YOU.
24 [REDACTED]

25 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I

1 LIVE IN [REDACTED] I'M A SYSTEMS ANALYST FOR A LARGE
2 PUBLISHING COMPANY. MY WIFE IS AN [REDACTED]
3 [REDACTED] I HAVE [REDACTED] CHILDREN THAT THINK THEY'RE ADULTS, BUT
4 THE OLDEST IS REALLY [REDACTED] I'VE BEEN ON THREE SUPERIOR COURT
5 TRIALS. AND I'M SURE I CAN FAIR AS A GRAND JUROR.

6 THE COURT: [REDACTED] THE PRESENTATION OF
7 EVIDENCE TO THE GRAND JURY IS NECESSARILY ONE-SIDED. THAT'S
8 WHAT THE SYSTEM CONTEMPLATES. YOU'RE GOING TO BE HEARING ONLY
9 FROM THE PROSECUTOR. THE PROSECUTOR IS GOING TO BE PRESENTING
10 EVIDENCE IN SUPPORT OF THE PROPOSED CHARGE.

11 THERE'S A LATER OPPORTUNITY, IF AN INDICTMENT IS
12 RETURNED, FOR THE PERSON TO DEFEND HIMSELF OR HERSELF AND
13 PRESENT HIS OR HER SIDE OF THE CASE, CONFRONT THE ACCUSERS AND
14 THE WITNESSES AGAINST HIM.

15 BUT I WANT TO MAKE SURE THAT YOU'RE PREPARED FOR
16 THAT SITUATION; THAT YOU'RE GOING TO BE HEARING JUST ONE SIDE,
17 AND YOU'RE GOING TO BE ASKED TO MAKE A DECISION BASED ON THE
18 PROSECUTOR'S EVIDENCE ALONE.

19 YOU'RE PREPARED FOR THAT; RIGHT?

20 PROSPECTIVE JUROR: I UNDERSTAND THAT.

21 THE COURT: THAT'S ONE OF THE FUNDAMENTAL
22 DIFFERENCES BETWEEN THE FULL ADVERSARY SYSTEM OF A JURY TRIAL
23 AND THEN OUR GRAND JURY PROCEEDING.

24 NOW, HAVING TOLD YOU THAT, MY EXPERIENCE IS THAT THE
25 PROSECUTORS DON'T PLAY HIDE-THE-BALL. IF THERE'S SOMETHING

1 ADVERSE OR THAT CUTS AGAINST THE CHARGE, YOU'LL BE INFORMED OF
2 THAT. THEY HAVE A DUTY TO DO THAT.

3 BUT THAT'S NOT TO SAY THAT EVERY CHARGE WILL PASS
4 MUSTER. THAT'S UP TO YOU AND YOUR FELLOW GRAND JURORS.

5 UNDERSTANDING THAT THAT'S THE TASK OF THE GRAND
6 JURY, I TAKE IT YOU'RE UP TO IT?

7 PROSPECTIVE JUROR: I BELIEVE SO.

8 THE COURT: THANK YOU.

9 [REDACTED]
10 PROSPECTIVE JUROR: MY NAME IS [REDACTED]
11 I LIVE IN SAN DIEGO IN THE MISSION HILLS AREA. I'M RETIRED.
12 I WAS A CLINICAL SOCIAL WORKER. I'M SINGLE. NO CHILDREN.
13 I'VE BEEN CALLED FOR JURY SERVICE A NUMBER OF TIMES, BUT I'VE
14 NEVER ACTUALLY BEEN SELECTED AS A JUROR. CAN I BE FAIR? I'LL
15 TRY. BECAUSE OF THE NATURE OF THE WORK THAT I DID, I HAVE
16 SOME FAIRLY STRONG OPINIONS ABOUT SOME OF THE PEOPLE WHO COME
17 INTO THE LEGAL SYSTEM. BUT I WOULD TRY TO WORK WITH THAT.

18 THE COURT: WE'RE ALL PRODUCTS OF OUR EXPERIENCE.
19 WE'RE NOT GOING TO TRY TO DISABUSE YOU OF EXPERIENCES OR
20 JUDGMENTS THAT YOU HAVE. WHAT WE ASK IS THAT YOU NOT ALLOW
21 THOSE TO CONTROL INVARIABLY THE OUTCOME OF THE CASES COMING IN
22 FRONT OF YOU; THAT YOU LOOK AT THE CASES FRESH, YOU EVALUATE
23 THE CIRCUMSTANCES, LISTEN TO THE WITNESS TESTIMONY, AND THEN
24 MAKE AN INDEPENDENT JUDGMENT.

25 DO YOU THINK YOU CAN DO THAT?

1 PROSPECTIVE JUROR: I'LL DO MY BEST.

2 THE COURT: IS THERE A CERTAIN CATEGORY OF CASE THAT
3 YOU THINK MIGHT BE TROUBLESOME FOR YOU TO SIT ON THAT YOU'D BE
4 INSTINCTIVELY TILTING ONE WAY IN FAVOR OF INDICTMENT OR THE
5 OTHER WAY AGAINST INDICTING JUST BECAUSE OF THE NATURE OF THE
6 CASE?

7 PROSPECTIVE JUROR: WELL, I HAVE SOME FAIRLY STRONG
8 FEELINGS REGARDING DRUG CASES. I DO NOT BELIEVE THAT ANY
9 DRUGS SHOULD BE CONSIDERED ILLEGAL, AND I THINK WE'RE SPENDING
10 A LOT OF TIME AND ENERGY PERSECUTING AND PROSECUTING CASES
11 WHERE RESOURCES SHOULD BE DIRECTED IN OTHER AREAS.

12 I ALSO HAVE STRONG FEELINGS ABOUT IMMIGRATION CASES.
13 AGAIN, I THINK WE'RE SPENDING A LOT OF TIME PERSECUTING PEOPLE
14 THAT WE SHOULD NOT BE.

15 THE COURT: WELL, LET ME TELL YOU, YOU'VE HIT ON THE
16 TWO TYPES OF CASES THAT ARE REALLY KIND OF THE STAPLE OF THE
17 WORK WE DO HERE IN THE SOUTHERN DISTRICT OF CALIFORNIA. AS I
18 MENTIONED IN MY INITIAL REMARKS, OUR PROXIMITY TO THE BORDER
19 KIND OF MAKES US A FUNNEL FOR BOTH DRUG CASES AND IMMIGRATION
20 CASES. YOU'RE GOING TO BE HEARING THOSE CASES I CAN TELL YOU
21 FOR SURE. JUST AS DAY FOLLOWS NIGHT, YOU'RE HEAR CASES LIKE
22 THAT.

23 NOW, THE QUESTION IS CAN YOU FAIRLY EVALUATE THOSE
24 CASES? JUST AS THE DEFENDANT ULTIMATELY IS ENTITLED TO A FAIR
25 TRIAL AND THE PERSON THAT'S ACCUSED IS ENTITLED TO A FAIR

1 APPRAISAL OF THE EVIDENCE OF THE CASE THAT'S IN FRONT OF YOU,
2 SO, TOO, IS THE UNITED STATES ENTITLED TO A FAIR JUDGMENT. IF
3 THERE'S PROBABLE CAUSE, THEN THE CASE SHOULD GO FORWARD. I
4 WOULDN'T WANT YOU TO SAY, "WELL, YEAH, THERE'S PROBABLE CAUSE.
5 BUT I STILL DON'T LIKE WHAT OUR GOVERNMENT IS DOING. I
6 DISAGREE WITH THESE LAWS, SO I'M NOT GOING TO VOTE FOR IT TO
7 GO FORWARD." IF THAT'S YOUR FRAME OF MIND, THEN PROBABLY YOU
8 SHOULDN'T SERVE. ONLY YOU CAN TELL ME THAT.

9 PROSPECTIVE JUROR: WELL, I THINK I MAY FALL IN THAT
10 CATEGORY.

11 THE COURT: IN THE LATTER CATEGORY?

12 PROSPECTIVE JUROR: YES.

13 THE COURT: WHERE IT WOULD BE DIFFICULT FOR YOU TO
14 SUPPORT A CHARGE EVEN IF YOU THOUGHT THE EVIDENCE WARRANTED
15 IT?

16 PROSPECTIVE JUROR: YES.

17 THE COURT: I'M GOING TO EXCUSE YOU, THEN. I
18 APPRECIATE YOUR HONEST ANSWERS.

19 THE COURT: [REDACTED] DO YOU WANT TO PICK A REPLACEMENT
20 AT THIS POINT?

21 THE CLERK: YES, SIR.

22 JUROR NO. [REDACTED]

23 THE COURT: LET ME GIVE YOU A MINUTE TO GET A COPY
24 OF THE SHEET. TAKE A LOOK AT IT. I THINK WE KNOW WHO YOU
25 ARE.

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[REDACTED]
PROSPECTIVE JUROR: CORRECT.

I LIVE IN [REDACTED] MY HUSBAND AND I HAVE OUR OWN
BUSINESS. WE ARE ENGINEERING AND MANUFACTURING COMPONENTS FOR
[REDACTED] WE'VE BEEN IN BUSINESS ABOUT [REDACTED]
YEARS NOW. WE'RE DOING REALLY WELL. HE FREAKED OUT WHEN HE
TOLD ME I SHOULD JUST TELL YOU I SEE GUILTY PEOPLE.

THE COURT: OH, I SAY THROUGH THE PHONY EXCUSES.
YOU THINK OTHERS HAVEN'T TRIED THAT BEFORE.

PROSPECTIVE JUROR: I'M SURE THEY HAVE.

WE'VE BEEN MARRIED 31 YEARS. I HAVE TWO ADULT
CHILDREN. ONE'S A [REDACTED] AND THE OTHER ONE'S A [REDACTED]
[REDACTED] STUDENT AT [REDACTED] IN [REDACTED] IT'S MY FIRST COURT
APPEARANCE. AND I THINK I CAN BE FAIR.

THE COURT: I THINK YOU'LL ACTUALLY ENJOY IT, AND I
HOPE YOU'LL BE ABLE TO ACCOMMODATE YOUR WORK SCHEDULE HELPING
YOUR HUSBAND WITH THAT.

PROSPECTIVE JUROR: I'M KIND OF CONCERNED ABOUT OUR
SCHEDULE.

THE COURT: MOST PEOPLE FIND A WAY TO WORK IT OUT.
WE HEAR OFTEN "WELL, I'M SELF-EMPLOYED. THIS IS GOING TO BE A
TREMENDOUS FINANCIAL BURDEN."

HERE'S WHAT I'M BUFFETED BY AS THE PERSON CHARGED
WITH MAKING THE DECISIONS: THE CONSTITUTION REQUIRES THAT
JURIES, TRIAL JURIES AND GRAND JURIES, BE DRAWN FROM A FAIR

1 AND ACCURATE CROSS-SECTION OF THE COMMUNITY. AND WHAT THE
2 COURTS HAVE SAID OVER THE YEARS IS NO GROUP IS AUTOMATICALLY
3 EXCLUDED. YOU'VE GOT TO LOOK AT EVERYBODY. AND THE EXCUSES
4 HAVE TO BE ON A CASE-BY-CASE BASIS.

5 AS YOU CAN IMAGINE, IF I EXCUSED EVERYONE WHO HAD
6 FINANCIAL HARDSHIP OR WAS SELF-EMPLOYED, THEN WE WOULD SKEW
7 OUR JURY POOLS. WE WOULD HAVE WHOLE SEGMENTS OF OUR COMMUNITY
8 HERE THAT WERE NOT REPRESENTED, AND THAT WOULDN'T BE
9 CONSISTENT WITH THE CONSTITUTIONAL GUARANTEES.

10 AND SO I'M THE GUY AT THE FLOODGATE WITH THE BIG
11 WHEEL TRYING TO TURN IT AND MAKE THE DECISIONS. I SAY THAT
12 RELUCTANTLY BECAUSE I'M NOT UNMINDFUL AT ALL OF THE BURDEN IT
13 PLACES ON NOT ONLY SELF-EMPLOYED PEOPLE, BUT PEOPLE WITH
14 REGULAR FULL-TIME JOBS THAT ARE GOING TO BE AWAY FOR A PERIOD
15 OF TIME.

16 WE DO APPRECIATE YOUR SERVICE. IT'S IMPORTANT
17 SERVICE. YOU SAY THIS IS YOUR FIRST TIME HERE. IF YOU WERE
18 EVER HERE IN SOME OTHER CAPACITY, WITH LITIGATION OF SOME
19 TYPE, WHETHER CIVIL OR CRIMINAL, YOU WOULD WANT CONSCIENTIOUS
20 PEOPLE FROM THE COMMUNITY. THAT'S THE GUARANTEE THAT WE TRY
21 TO GIVE; IS THAT "WE'RE GOING TO GIVE YOU A JUST DECISION, AND
22 IT WILL BE A JURY OF YOUR PEERS, PEOPLE JUST LIKE YOU FROM OUR
23 COMMUNITY WHO WILL MAKE THE DECISION.. WE CAN'T CONTINUE TO
24 GIVE THAT GUARANTEE UNLESS WE HAVE PEOPLE WILLING TO SERVE.

25 I THANK YOU. I APPRECIATE THE SACRIFICE. WELCOME.

1 WE'RE GLAD TO HAVE YOU.

2 [REDACTED]
3 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
4 LIVE IN [REDACTED] AND I'M A JANITOR. I'M MARRIED. MY
5 WIFE IS A [REDACTED] I HAVE [REDACTED] ADULT CHILDREN. MY
6 [REDACTED] IN [REDACTED] IN [REDACTED] MY [REDACTED] IS
7 WORKING [REDACTED] AN [REDACTED]
8 AND I HAVE ONCE BEEN A TRIAL JUROR ABOUT 15 YEARS AGO.

9 THE COURT: CRIMINAL OR CIVIL?

10 PROSPECTIVE JUROR: CIVIL CASE.

11 AND I COULD BE FAIR.

12 THE COURT: YOU MAKE THAT STATEMENT MINDFUL OF THE
13 QUESTIONS I'VE PUT TO OTHERS AND THE ANSWERS THAT THEY'VE
14 GIVEN?

15 PROSPECTIVE JUROR: YES.

16 THE COURT: THANK YOU.

17 [REDACTED]
18 PROSPECTIVE JUROR: [REDACTED] I LIVE IN

19 [REDACTED] I'M AN ENGINEER FOR THE [REDACTED] I
20 INSTALL AND MAINTAIN [REDACTED]
21 [REDACTED] I'M NOT MARRIED. I HAVE NO CHILDREN.
22 I HAVE NOT SERVED ON A JURY BEFORE.

23 THE COURT: ANY TYPE OF JURY?

24 PROSPECTIVE JUROR: ANY TYPE OF JURY.

25 I HOPE I CAN BE FAIR.

1 THE COURT: I THINK YOU CAN BE FAIR.

2 THE QUESTION IS JUST A TIME PROBLEM; RIGHT?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: DOESN'T HAVE TO DO WITH FAIRLY --

5 PROSPECTIVE JUROR: NO, SIR.

6 THE COURT: I SPOKE TO YOU AT SIDEBAR ABOUT THAT.

7 IF IT BECOMES A PROBLEM, WE CAN DEAL WITH IT. I'LL REVISIT IT
8 AT SOME LATER TIME.

9 BUT I THINK THE EXPLANATION I GAVE TO [REDACTED] ALSO
10 WOULD APPLY IN YOUR CASE. I CAN'T JUST SUMMARILY SAY, "WELL,
11 THIS FELLOW'S GOT A TIME PROBLEM, SO WE'VE GOT TO LET HIM GO."

12 WHERE'S YOUR DUTY STATION HERE? WHERE'S YOUR
13 WORKPLACE?

14 PROSPECTIVE JUROR: IN [REDACTED]

15 THE COURT: [REDACTED] THANK YOU. I APPRECIATE
16 YOUR ANSWERS.

17 [REDACTED]

18 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I

19 LIVE IN [REDACTED]. I'M A STATISTICIAN AT [REDACTED]

20 [REDACTED] I'M SEPARATED RIGHT NOW. I HAVE TWO [REDACTED]

21 CHILDREN. I'VE BEEN ON A TRIAL JURY ON A CRIMINAL CASE AT THE
22 SUPERIOR COURT ABOUT TWO YEARS AGO. AND I CAN BE FAIR.

23 THE COURT: YOU WATCHED THE FILM AND APPRECIATE THE
24 DIFFERENCE BETWEEN THE FUNCTION OF THE GRAND JURY AND THEN
25 WHAT A CRIMINAL TRIAL JURY DOES?

COMPUTER-AIDED TRANSCRIPTION

1 PROSPECTIVE JUROR: YES.

2 THE COURT: THANK YOU, [REDACTED]

3 I'M NOT GOING TO MAKE ANY JOKES ABOUT [REDACTED]

4 [REDACTED]
5 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
6 LIVE IN [REDACTED] JUST EAST OF HERE. I'M A PROJECT
7 MANAGER FOR THE CITY OF [REDACTED]
8 [REDACTED] I'M MARRIED. MY WIFE'S A [REDACTED], BUT
9 SHE'S ON LEAVE RIGHT NOW RAISING [REDACTED] KIDS, [REDACTED] AND
10 [REDACTED] MONTHS. SO THEY'RE NOT ADULTS. I HAVE NO EXPERIENCE
11 SERVING ON ANY JURY OF ANY TYPE. I'VE BEEN SUMMONED. I'VE
12 BEEN EXCUSED FROM ONE OR TWO. I'VE SIMPLY NOT BEEN CALLED FOR
13 OTHERS. I BELIEVE I CAN BE FAIR.

14 THE COURT: THANK YOU.

15 [REDACTED]
16 PROSPECTIVE JUROR: [REDACTED] I LIVE IN THE
17 COMMUNITY OF [REDACTED] I DRIVE A SCHOOL FOR THE [REDACTED]
18 [REDACTED] SCHOOL DISTRICT. MY WIFE IS A [REDACTED]
19 [REDACTED] I HAVE TWO [REDACTED] CHILDREN. ONE'S A [REDACTED]
20 [REDACTED] IN [REDACTED] BACK IN [REDACTED] MY OTHER SON
21 WORKS AS A [REDACTED]

22 THE COURT: HOW LONG HAVE YOU DRIVEN A SCHOOL BUS UP
23 IN THE [REDACTED]

24 PROSPECTIVE JUROR: THREE YEARS NOW. ACTUALLY, I'VE
25 ONLY HAD TO DRIVE UP TO [REDACTED] WITH A BUS FOR ABOUT THREE

1 MONTHS. MOST OF MY STUFF HAS BEEN IN THE [REDACTED]
2 AREA. NOW I'M OVER BY [REDACTED] DRIVING. I DRIVE
3 SPECIAL NEEDS CHILDREN.

4 THE COURT: IT'S BEEN A WHILE SINCE MY KIDS WERE
5 SMALL. I TOOK THEM TO SNOW.

6 [REDACTED] IS UP IN THE MOUNTAINS; RIGHT?

7 PROSPECTIVE JUROR: JUST ABOVE [REDACTED] WHERE THE
8 FIRE WAS.

9 THE COURT: OH. I'M THINKING WAY FARTHER EAST AND
10 COLDER THAN [REDACTED]

11 YOU'RE NOT DRIVING OUT IN THE SNOW DURING THE
12 WINTER, ARE YOU?

13 PROSPECTIVE JUROR: NONE OF THE [REDACTED]
14 SCHOOLS.

15 AND I'VE NEVER BEEN ON A JURY AT ALL. I THINK I CAN
16 DO ALL THIS.

17 THE COURT: YOU HAVE NO RESERVATION ABOUT YOUR
18 ABILITY TO BE FAIR AND IMPARTIAL AND LOOK AT THE EVIDENCE AND
19 PERFORM THE FUNCTION THAT THE GRAND JURY PERFORMS.

20 PROSPECTIVE JUROR: NO, SIR.

21 THE COURT: [REDACTED]

22 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
23 IN [REDACTED] I WORK AS A SCHOOL PSYCHOLOGIST. I'M AT THE
24 [REDACTED] SCHOOL DISTRICT. I AM MARRIED. MY HUSBAND IS A
25 [REDACTED] SO NOW HE [REDACTED] I HAVE [REDACTED]

1 ADULT STEPCHILDREN. ONE IS AN [REDACTED] AND ONE
2 IS IN [REDACTED] I SERVED AS A TRIAL JUROR IN VISTA MAYBE
3 TEN YEARS AGO NOW. AND YES, I CAN BE FAIR.

4 THE COURT: THANK YOU. I APPRECIATE YOUR ANSWERS.

5 [REDACTED]
6 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I'M
7 FROM [REDACTED] I'M A HOMEMAKER. MY HUSBAND IS A [REDACTED]
8 [REDACTED] OUR [REDACTED] I'VE NEVER BEEN SELECTED
9 FOR A JURY, ALTHOUGH I WAS CALLED. AND I THINK I CAN BE FAIR.

10 THE COURT: WERE YOU CALLED UP TO VISTA? IS THAT
11 WHERE YOU WOULD REPORT?

12 PROSPECTIVE JUROR: YES.

13 THE COURT: [REDACTED]

14 PROSPECTIVE JUROR: MAY NAME IS [REDACTED] I
15 LIVE IN [REDACTED] I'M A REAL ESTATE AGENT. NOT MARRIED. NO
16 KIDS. HAVE NOT SERVED. AND AS FAR AS BEING FAIR, IT KIND OF
17 DEPENDS UPON WHAT THE CASE IS ABOUT BECAUSE THERE IS A
18 DISPARITY BETWEEN STATE AND FEDERAL LAW.

19 THE COURT: IN WHAT REGARD?

20 PROSPECTIVE JUROR: SPECIFICALLY, MEDICAL
21 MARIJUANA.

22 THE COURT: WELL, THOSE THINGS -- THE CONSEQUENCES
23 OF YOUR DETERMINATION SHOULDN'T CONCERN YOU IN THE SENSE THAT
24 PENALTIES OR PUNISHMENT, THINGS LIKE THAT -- WE TELL TRIAL
25 JURORS, OF COURSE, THAT THEY CANNOT CONSIDER THE PUNISHMENT OR

1 THE CONSEQUENCE THAT CONGRESS HAS SET FOR THESE THINGS. WE'D
2 ASK YOU TO ALSO ABIDE BY THAT. WE WANT YOU TO MAKE A
3 BUSINESS-LIKE DECISION AND LOOK AT THE FACTS AND MAKE A
4 DETERMINATION OF WHETHER THERE WAS A PROBABLE CAUSE.

5 COULD YOU DO THAT? COULD YOU PUT ASIDE STRONG
6 PERSONAL FEELINGS YOU MAY HAVE?

7 PROSPECTIVE JUROR: IT DEPENDS. I HAVE A VERY
8 STRONG OPINION ON IT. WE LIVE IN THE STATE OF CALIFORNIA, NOT
9 FEDERAL CALIFORNIA. THAT'S HOW I FEEL ABOUT IT VERY STRONGLY.

10 THE COURT: WELL, I DON'T KNOW HOW OFTEN MEDICAL
11 MARIJUANA USE CASES COME UP HERE. I DON'T HAVE A GOOD FEEL
12 FOR THAT. MY INSTINCT IS THEY PROBABLY DON'T ARISE VERY
13 OFTEN. BUT I SUPPOSE ONE OF THE SOLUTIONS WOULD BE IN A CASE
14 IMPLICATING MEDICAL USE OF MARIJUANA, YOU COULD RECUSE
15 YOURSELF FROM THAT CASE.

16 ARE YOU WILLING TO DO THAT?

17 PROSPECTIVE JUROR: SURE.

18 THE COURT: ALL OTHER CATEGORIES OF CASES YOU COULD
19 GIVE A FAIR, CONSCIENTIOUS JUDGMENT ON?

20 PROSPECTIVE JUROR: FOR THE MOST PART, BUT I ALSO
21 FEEL THAT DRUGS SHOULD BE LEGAL.

22 THE COURT: OUR LAWS ARE DIFFERENT FROM THAT. AND
23 AS YOU HEARD ME EXPLAIN TO [REDACTED] A LOT OF THE CASES
24 THAT COME THROUGH IN OUR COURT ARE DRUG CASES. YOU'LL BE
25 CALLED UPON TO EVALUATE THOSE CASES OBJECTIVELY AND THEN MAKE

1 THE TWO DETERMINATIONS THAT I STARTED OFF EXPLAINING TO
2 [REDACTED] "DO I HAVE A REASONABLE BELIEF THAT A CRIME WAS
3 COMMITTED? WHETHER I AGREE WITH WHETHER IT OUGHT TO BE A
4 CRIME OR NOT, DO I BELIEVE THAT A CRIME WAS COMMITTED AND THAT
5 THE PERSON THAT THE GOVERNMENT IS ASKING ME TO INDICT WAS
6 SOMEHOW INVOLVED IN THIS CRIME, EITHER COMMITTED IT OR HELPED
7 WITH IT?"

8 COULD YOU DO THAT IF YOU SIT AS A GRAND JUROR?

9 PROSPECTIVE JUROR: THE LAST JURY I WAS ASKED TO SIT
10 ON, I GOT EXCUSED BECAUSE OF THAT REASON.

11 THE COURT: YOU SAID YOU COULDN'T DO IT? YOUR
12 SENTIMENTS ARE SO STRONG THAT THEY WOULD IMPAIR YOUR
13 OBJECTIVITY ABOUT DRUG CASES?

14 PROSPECTIVE JUROR: I THINK RAPISTS AND MURDERERS
15 OUGHT TO GO TO JAIL, NOT PEOPLE USING DRUGS.

16 THE COURT: I THINK RAPISTS AND MURDERERS OUGHT TO
17 GO TO JAIL, TOO. IT'S NOT FOR ME AS A JUDGE TO SAY WHAT THE
18 LAW IS. WE ELECT LEGISLATORS TO DO THAT. WE'RE SORT OF AT
19 THE END OF THE PIPE ON THAT. WE'RE CHARGED WITH ENFORCING THE
20 LAWS THAT CONGRESS GIVES US.

21 I CAN TELL YOU SOMETIMES I DON'T AGREE WITH SOME OF
22 THE LEGAL DECISIONS THAT ARE INDICATED THAT I HAVE TO MAKE.
23 BUT MY ALTERNATIVE IS TO VOTE FOR SOMEONE DIFFERENT, VOTE FOR
24 SOMEONE THAT SUPPORTS THE POLICIES I SUPPORT AND GET THE LAW
25 CHANGED. IT'S NOT FOR ME TO SAY, "WELL, I DON'T LIKE IT. SO

1 I'M NOT GOING TO FOLLOW IT HERE."

2 YOU'D HAVE A SIMILAR OBLIGATION AS A GRAND JUROR
3 EVEN THOUGH YOU MIGHT HAVE TO GRIT YOUR TEETH ON SOME CASES.
4 PHILOSOPHICALLY, IF YOU WERE A MEMBER OF CONGRESS, YOU'D VOTE
5 AGAINST, FOR EXAMPLE, CRIMINALIZING MARIJUANA. I DON'T KNOW
6 IF THAT'S IT, BUT YOU'D VOTE AGAINST CRIMINALIZING SOME DRUGS.

7 THAT'S NOT WHAT YOUR PREROGATIVE IS HERE. YOUR
8 PREROGATIVE INSTEAD IS TO ACT LIKE A JUDGE AND TO SAY, "ALL
9 RIGHT. THIS IS WHAT I'VE GOT TO DEAL WITH OBJECTIVELY. DOES
10 IT SEEM TO ME THAT A CRIME WAS COMMITTED? YES. DOES IT SEEM
11 TO ME THAT THIS PERSON'S INVOLVED? IT DOES." AND THEN YOUR
12 OBLIGATION, IF YOU FIND THOSE THINGS TO BE TRUE, WOULD BE TO
13 VOTE IN FAVOR OF THE CASE GOING FORWARD.

14 I CAN UNDERSTAND IF YOU TELL ME "LOOK, I GET ALL
15 THAT, BUT I JUST CAN'T DO IT OR I WOULDN'T DO IT." I DON'T
16 KNOW WHAT YOUR FRAME OF MIND IS. YOU HAVE TO TELL ME ABOUT
17 THAT.

18 PROSPECTIVE JUROR: I'M NOT COMFORTABLE WITH IT.

19 THE COURT: DO YOU THINK YOU'D BE INCLINED TO LET
20 PEOPLE GO ON DRUG CASES EVEN THOUGH YOU WERE CONVINCED THERE
21 WAS PROBABLE CAUSE THEY COMMITTED A DRUG OFFENSE?

22 PROSPECTIVE JUROR: IT WOULD DEPEND UPON THE CASE.

23 THE COURT: IS THERE A CHANCE THAT YOU WOULD DO
24 THAT?

25 PROSPECTIVE JUROR: YES.

1 THE COURT: I APPRECIATE YOUR ANSWERS. I'LL EXCUSE
2 YOU AT THIS TIME.

3 THE CLERK: [REDACTED]

4 THE COURT: GOOD MORNING, [REDACTED]

5 PROSPECTIVE JUROR: GOOD MORNING.

6 THE COURT: LET ME GIVE YOU A MINUTE TO GET
7 ORIENTED.

8 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
9 LIVE IN [REDACTED] I'M A CONTRACT ADMINISTRATOR FOR THE
10 STATE OF CALIFORNIA ON THEIR [REDACTED] PROJECTS.
11 I'M NOT MARRIED. I DON'T HAVE ANY CHILDREN. I HAVE
12 EXPERIENCE IN THE '80'S AS A TRIAL JUROR. AND I CAN BE
13 FAIR.

14 THE COURT: DO YOU HAVE ANYTHING TO DO WITH GETTING
15 THE TELEPHONE POLES DOWN IN MY NEIGHBORHOOD?

16 PROSPECTIVE JUROR: NO, BUT I CAN GET YOU A NUMBER
17 TO CALL.

18 THE COURT: THAT'S GOOD ENOUGH. WE'RE GOING TO KEEP
19 YOU ON THIS GRAND JURY.

20 [REDACTED]
21 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
22 IN [REDACTED] I'M A SPECIAL ED ASSISTANT AT [REDACTED]
23 [REDACTED] SCHOOL DISTRICT. I'VE BEEN THERE FOR ABOUT [REDACTED] YEARS.
24 I'VE BEEN MARRIED FOR [REDACTED] YEARS. MY HUSBAND IS [REDACTED] HE
25 [REDACTED] I HAVE [REDACTED] ADULT CHILDREN: ONE'S A

1 [REDACTED] MY [REDACTED] BOYS WORK FOR THE [REDACTED] IN
2 [REDACTED] AND THEY WORK FOR A COMPANY WHERE THEY GO
3 INTO THE [REDACTED] AND THE [REDACTED] TO COPY OFF [REDACTED]
4 RECORDS.

5 THE COURT: THEY BOTH HAVE THE SAME JOB, SAME JOB
6 FUNCTIONS?

7 PROSPECTIVE JUROR: YES. WELL, ACTUALLY, MY OLDER
8 BOY HAD THIS JOB FOR -- HE'S BEEN WORKING FOR THE COMPANY FOR
9 A LONG TIME.

10 THE COURT: TOLD HIS BROTHER "THIS IS A GOOD GIG"?

11 PROSPECTIVE JUROR: YEAH. HIS BROTHER WAS WORKING
12 IN [REDACTED] FOR A WHILE. THEN THE JOB OPENED UP, AND MY
13 YOUNGER ONE NOW IS WORKING THERE. HE GOES ALSO ALL OVER

14 [REDACTED]

15 THE COURT: WHERE'S THE OLDER BROTHER?

16 PROSPECTIVE JUROR: THE OLDER BROTHER NOW IS IN
17 [REDACTED] THINGS WERE A LITTLE BIT BETTER FOR HIM TO GROW AND
18 BE ABLE TO BUY A HOME. SO HE'S OVER THERE WITH HIS WIFE AND
19 TWO KIDS.

20 I HAVE BEEN ON A JURY BEFORE FOR FEDERAL IN 1980.
21 MAYBE. A LONG, LONG TIME AGO. I'VE BEEN CALLED FOR SUPERIOR
22 COURT IN EL CAJON AND HERE IN SAN DIEGO.

23 THE COURT: DID YOU WATCH OUR ORIENTATION FILM THIS
24 MORNING AND APPRECIATE THE DIFFERENCE IN FUNCTIONS BETWEEN
25 GRAND JURIES AND TRIAL JURIES?

1 PROSPECTIVE JUROR: YES.

2 THE COURT: ANY REASON YOU CAN THINK OF WHY YOU
3 WOULDN'T BE FAIR AND IMPARTIAL?

4 PROSPECTIVE JUROR: NO. I CAN BE FAIR.

5 THE COURT: THANK YOU, [REDACTED]
6 [REDACTED]

7 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I COME
8 FROM [REDACTED] WHICH IS [REDACTED] I WORK FOR THE POST
9 OFFICE. I'M A MAIL CARRIER. I'M DIVORCED. I HAVE ONE ADULT
10 [REDACTED] SHE WORKS IN A [REDACTED] AND ALSO AT THE [REDACTED]
11 DOWN THERE. I'VE BEEN ON TWO TRIALS: ONE WAS A CRIMINAL,
12 SPOUSAL ABUSE; AND THE OTHER ONE WAS A CRIMINAL **.

13 THE COURT: WAS THAT OUT IN [REDACTED]

14 PROSPECTIVE JUROR: SUPERIOR COURT, YES.

15 AND YES, I CAN BE FAIR.

16 THE COURT: HOW LONG WAS YOUR DRIVE OVER TODAY?

17 PROSPECTIVE JUROR: TWO HOURS.

18 THE COURT: DID THE DESERT FLOWERS START TO BLOOM
19 YET?

20 PROSPECTIVE JUROR: NOT YET.

21 THE COURT: WHEN DOES THAT HAPPEN?

22 PROSPECTIVE JUROR: JUST ABOUT MAY, USUALLY.

23 THE COURT: WHAT TIME WOULD [REDACTED] HAVE TO BE
24 HERE ORDINARILY?

25 THE CLERK: THEY TELL YOU YOU CAN COME OVERNIGHT.

1 PROSPECTIVE JUROR: YES, I FOUND THAT OUT WHEN I GOT
2 HERE.

3 THE COURT: IF THE DRIVE'S NOT GOING TO BE A
4 PROBLEM, YOU'RE HAPPY TO SERVE?

5 PROSPECTIVE JUROR: I CAN SERVE, YES.

6 THE COURT: WE'RE HAPPY TO HAVE YOU HERE.

7 THE SOUTHERN DISTRICT OF CALIFORNIA, LADIES AND
8 GENTLEMEN, COMPRISES BOTH SAN DIEGO COUNTY -- AND MOST OF US
9 ARE FROM SAN DIEGO COUNTY -- AND ALSO IMPERIAL COUNTY. WE TRY
10 TO PULL RANDOMLY BUT SYSTEMATICALLY FROM IMPERIAL COUNTY, TOO.
11 IT'S NOT OUT OF THE ORDINARY. IT'S A LITTLE UNUSUAL THAT I'LL
12 GET MORE THAN ONE OR TWO IMPERIAL COUNTY PROSPECTIVE JURORS
13 EVEN ON A TRIAL JURY.

14 BUT WE'RE HAPPY TO HAVE YOU, TEN-GALLON HAT AND ALL.

15
16 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
17 LIVE IN THE [REDACTED] I'M RETIRED. I'VE
18 BEEN RETIRED FOR SIX YEARS.

19 THE COURT: WHAT KIND OF WORK DID YOU DO?

20 PROSPECTIVE JUROR: I WAS IN THE PRINTING INDUSTRY
21 FOR [REDACTED] YEARS.

22 MY WIFE IS [REDACTED] WE HAVE [REDACTED] ADULT
23 CHILDREN: TWO OF THEM LIVE [REDACTED] ONE'S AN [REDACTED]
24 [REDACTED] THE OTHER IS A [REDACTED]
25 [REDACTED] AND MY OTHER [REDACTED] LIVES IN [REDACTED]

1 SHE'S A [REDACTED]

2 THE COURT: DID THE [REDACTED] SING IN THE SHOWER
3 WHEN [REDACTED] LIVED AT HOME?

4 PROSPECTIVE JUROR: [REDACTED] STILL SINGS IN THE SHOWER.
5 AND I'VE BEEN CALLED A FEW TIMES, BUT HAVE NOT
6 SERVED ON ANY JURIES. AND I CERTAINLY CAN BE FAIR.

7 THE COURT: THANK YOU, [REDACTED] WE'RE HAPPY
8 TO HAVE YOU.

9 FINALLY, [REDACTED]

10 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
11 IN [REDACTED] I'M AN ACTIVE REAL ESTATE BROKER. MY
12 WIFE IS [REDACTED] WE HAVE [REDACTED] ADULT CHILDREN: [REDACTED] OF THEM
13 ARE MARRIED, AND ONE'S A [REDACTED] I
14 HAVE NO EXPERIENCE AS A JUROR. HOWEVER, I HAVE SERVED AS A
15 WITNESS FOR THE GRAND JURY.

16 THE COURT: YOU'VE ACTUALLY BEEN CALLED AS A WITNESS
17 BEFORE A GRAND JURY?

18 PROSPECTIVE JUROR: YES, I HAVE.

19 THE COURT: HOW LONG AGO WAS THAT?

20 PROSPECTIVE JUROR: I WOULD SAY ABOUT TEN YEARS.

21 AND YES, I CAN BE FAIR.

22 THE COURT: WELL, YOU MAY KNOW FROM YOUR EXPERIENCE
23 THAT IF YOU HAVE COUNSEL AS A WITNESS, YOUR COUNSEL DOESN'T
24 ACCOMPANY YOU IN TO THE GRAND JURY. THE HALLMARK OF THE GRAND
25 JURY IS THAT IT'S A SECRET PROCEEDING AND NECESSARILY SO.

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33

1 BECAUSE IF YOU, AS A GRAND JURY, DECIDE NO CHARGES SHOULD BE
2 BROUGHT, THEN NO ONE'S THE WORSE FOR THE WEAR. NO ONE EVER
3 KNOWS ABOUT THAT.

4 WE DO ALLOW WITNESSES TO CONSULT WITH THEIR LAWYERS,
5 BUT THEY MUST LEAVE THE GRAND JURY ROOM, CONSULT OUTSIDE WITH
6 THE LAWYER, AND THEN COME BACK IN. SO THAT'S WHAT YOU CAN
7 EXPECT IF THERE ARE WITNESSES WHO ARE REPRESENTED BY COUNSEL.

8 PROSPECTIVE JUROR: IT WAS SO SECRETIVE THAT I
9 DIDN'T EVEN KNOW WHAT I WAS THERE FOR.

10 THE COURT: I'M GOING TO TOUCH ON THAT IN MY
11 REMARKS. BUT IT'S VERY IMPORTANT THAT -- IT'S CHARACTERISTIC
12 OF THE GRAND JURY, AND YOU WILL BE UNDER LEGAL OBLIGATIONS NOT
13 TO SPEAK OF WHAT GOES ON IN FRONT OF THE GRAND JURY. THERE'S
14 A LOT OF INTEREST SERVED BY THAT SECRECY, AS I SAID.

15 ORDINARILY, EVERYTHING IS SUPPOSED TO BE
16 TRANSCRIBED. WE'RE SUPPOSED TO KNOW WHAT OUR GOVERNMENT IS
17 DOING. BUT THIS IS ONE AREA WHERE TRADITIONALLY THE COURTS
18 AND EVERYONE ELSE SAYS, "NO. WE NEED TO HAVE CONFIDENTIALITY
19 AND SECRECY HERE." I TOUCHED ON ONE OF THE REASONS WHY IT HAS
20 TO DO WITH NOT RUINING THE REPUTATIONS OF PEOPLE, FOR EXAMPLE,
21 WHO MAY BE UNDER INVESTIGATION, BUT NO CHARGES EVER RESULT.
22 SOMETIMES THE POWER TO INDICT SOMEONE CAN BE THE POWER TO RUIN
23 A REPUTATION.

24 THERE ARE A LOT OF OTHER GOOD REASONS WHY THE GRAND
25 JURY HAS TO FUNCTION SECRETLY. FIRST, IT PROMOTES YOUR

1 SECURITY. PEOPLE WON'T KNOW THAT YOU'RE GRAND JURORS UNLESS
2 YOU TELL THEM. A LOT OF TIMES THE CRIMES UNDER INVESTIGATION,
3 THE GOVERNMENT IS NOT SURE YET WHETHER IT'S A CRIME. WE NEED
4 THE HELP OF THE GRAND JURY IN ASCERTAINING WHAT'S GOING ON.
5 SO THEY DON'T WANT TO TIP THEIR HAND AND SAY, "WE'RE LOOKING
6 AT SOMETHING." THEY DON'T WANT PEOPLE TO TAKE MEASURES TO
7 COVER UP CRIMINAL ACTIVITIES.

8 ON OTHER OCCASIONS, SOMEONE WHO KNOWS HE'S THE
9 OBJECT OF AN INVESTIGATION MIGHT FLEE TO A DIFFERENT COUNTRY
10 AND GET OUTSIDE THE JURISDICTION OF THE UNITED STATES WHERE
11 THEY COULDN'T BE REACHED.

12 SO ALL OF THOSE REASONS AND OTHERS PROMOTE THE
13 POLICY OF GRAND JURY SECRECY. YOU TOUCHED ON SOMETHING THAT'S
14 VERY IMPORTANT. IT WILL BE INCUMBENT UPON ALL OF YOU TO
15 MAINTAIN THE SECRECY OF THE GRAND JURY IF YOU TAKE THE OATH
16 AND SERVE AS GRAND JURORS.

17 HOW'S THE REAL ESTATE MARKET THESE DAYS, SLOW?

18 PROSPECTIVE JUROR: IT'S A LITTLE SLOW. I
19 SPECIALIZE IN INVESTMENT PROPERTIES.

20 THE COURT: SOME THINGS ARE HELPING, THOUGH; RIGHT?
21 THE MORTGAGE RATES ARE STARTING TO DROP?

22 PROSPECTIVE JUROR: THEY'VE DROPPED A LITTLE BIT.

23 THE COURT: THAT OUGHT TO HELP.

24 PROSPECTIVE JUROR: YEAH. THE MARKET'S STILL PRETTY
25 HIGH HERE IN SAN DIEGO PRICE-WISE.

1 THE COURT: I READ WHERE PEOPLE ARE JUST STAYING
2 LONGER. THE SELLERS ARE NOT GIVING UP THEIR PLACES FOR LESS.
3 THEY JUST SAY, "WELL, WE'LL STICK IT OUT. WE'LL DIG IN OUR
4 HEELS AND STAY."

5 IS THAT WHAT YOU'RE EXPERIENCING, TOO?

6 PROSPECTIVE JUROR: YES, I FIND A LOT OF THAT. WHAT
7 YOU HAVE TO REALIZE IS THAT A LOT OF PEOPLE, IF THEY JUST
8 BOUGHT RECENTLY AND THEY'RE TRYING TO GET OUT OR THEY BOUGHT
9 SOME SECONDARY PROPERTY AND SO ON, THOSE ARE THE PEOPLE THAT
10 ARE HAVING PROBLEMS.

11 THE COURT: THEY'RE A LITTLE BIT UNDERWATER?

12 PROSPECTIVE JUROR: SOME OF THEM ARE, YES.

13 THE COURT: THANK YOU, [REDACTED] I APPRECIATE
14 YOUR ANSWERS.

15 LADIES AND GENTLEMEN, HAVING SPOKEN WITH ALL OF YOU
16 AND PASSED ON YOUR GENERAL QUALIFICATIONS TO SIT, IT'S NOW MY
17 RESPONSIBILITY TO SELECT TWO OF YOUR NUMBER: ONE AS A
18 FOREPERSON, THE OTHER AS A DEPUTY FOREPERSON. THE FOREPERSON
19 PRESIDES OVER THE DELIBERATIONS OF THE GRAND JURY AND ACTS AS
20 THE CONTACT WITH BOTH THE COURT AND THE U.S. ATTORNEY'S
21 OFFICE.

22 NEITHER THE FOREPERSON OR THE DEPUTY FOREPERSON HAVE
23 ANY GREATER SAY. IT'S THE DELIBERATIVE PROCESS. THE 23 OF
24 YOU ALL HAVE AN EQUAL SAY.

25 BUT I THINK, HAVING LISTENED TO YOUR ANSWERS AND

COMPUTER-AIDED TRANSCRIPTION

1 EVALUATED YOUR BACKGROUNDS, IT APPEARS TO ME, [REDACTED]
2 HAVING PRIOR GRAND JURY SERVICE, THAT YOU WOULD BE A GOOD
3 PERSON TO ACT AS THE FOREPERSON OF THE GRAND JURY.

4 ARE YOU UP TO THE TASK AND WILLING TO ACCEPT THAT
5 ASSIGNMENT?

6 PROSPECTIVE JUROR: I AM.

7 THE COURT: THE COURT WOULD THEN APPOINT
8 [REDACTED] AS THE FOREPERSON OF THIS GRAND JURY.

9 [REDACTED] ARE YOU WILLING TO SERVE AS THE DEPUTY
10 FOREPERSON?

11 PROSPECTIVE JUROR: CERTAINLY.

12 THE COURT: YOU WOULD BE THE PRESIDING GRAND JUROR
13 IN THE ABSENCE OF [REDACTED]

14 THOSE ARE THE DESIGNATIONS I WOULD MAKE, THEN:
15 [REDACTED] AS FOREPERSON; [REDACTED] AS DEPUTY
16 FOREPERSON.

17 --000--

18 THE CLERK: NEXT PANEL, 07-2, THIS IS THE THURSDAY
19 PANEL.

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 THE COURT: GOOD MORNING.
18 [REDACTED]
19 PROSPECTIVE JUROR: I' [REDACTED] I LIVE [REDACTED]
20 [REDACTED] I'M A [REDACTED] FOR AN INDIAN TRIBE IN
21 [REDACTED] I'M MARRIED. MY HUSBAND IS A [REDACTED]
22 [REDACTED] I DO NOT HAVE ANY CHILDREN.
23 I HAVE NOT BEEN A JUROR BEFORE. AND YES, I CAN BE FAIR.
24 THE COURT: YOU'VE HAD THE ADVANTAGE OF SITTING
25 THROUGH ONE IMPANELMENT ALREADY. YOU HEARD THE QUESTIONS

1 GENERALLY THAT I POSED TO THE OTHER PROSPECTIVE GRAND JURORS
2 ABOUT THE DIFFERENCES BETWEEN TRIAL JURIES AND GRAND JURIES
3 AND WHETHER INDIVIDUALS COULD FULFILL THAT FUNCTION.

4 WOULD YOUR ANSWERS HAVE BEEN BASICALLY THE SAME AS
5 THOSE THAT I'VE BEEN GIVEN WITH THE EXCEPTION OF THE TWO
6 PEOPLE THAT HAVE BEEN EXCUSED?

7 PROSPECTIVE JUROR: YES.

8 THE COURT: [REDACTED]

9 PROSPECTIVE JUROR: I'M [REDACTED] I LIVE IN

10 [REDACTED] I WORK FOR AN INSURANCE COMPANY [REDACTED]
11 I'M MARRIED. MY WIFE IS A [REDACTED] I
12 HAVE [REDACTED] KIDS AGE [REDACTED] AND [REDACTED] I'VE BEEN A JUROR BEFORE
13 PROBABLY TEN YEARS AGO ON KIND OF A LOW-LEVEL CRIMINAL CASE.
14 AND IN THE NAME OF FULL DISCLOSURE, I'D PROBABLY SUGGEST I'D
15 BE THE FLIPSIDE OF SOME OF THE INDIVIDUALS WHO HAVE CONVEYED
16 THEIR CONCERNS PREVIOUSLY. I HAVE A STRONG BIAS FOR THE U.S.
17 ATTORNEY, WHATEVER CASES THEY MIGHT BRING. I DON'T THINK
18 THEY'RE HERE TO WASTE OUR TIME, THE COURT'S TIME, THEIR OWN
19 TIME. I APPRECIATE THE EVIDENTIARY STANDARDS, I GUESS, MORE
20 OR LESS, AS A LAYPERSON WOULD, THAT THEY ARE CALLED UPON IN
21 ORDER TO BRING THESE CASES OR SEEK AN INDICTMENT.

22 AND THE GATEKEEPER ROLE THAT I GUESS WE'RE BEING
23 ASKED TO PLAY IS ONE THAT I'D HAVE A DIFFICULT TIME, IN ALL
24 HONESTY. I'M PROBABLY SUGGESTING THAT THE U.S. ATTORNEY'S
25 CASE WOULD BE ONE THAT I WOULD BE WILLING TO STAND IN FRONT

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1 OF; IN OTHER WORDS, PREVENT FROM GOING TO A JURY.

2 THE COURT: IT SOMETIMES HAPPENS THAT AT THE TIME
3 THE CASE IS INITIALLY PRESENTED TO THE U.S. ATTORNEY'S OFFICE,
4 THINGS APPEAR DIFFERENTLY THAN 10 DAYS LATER, 20 DAYS LATER
5 WHEN IT'S PRESENTED TO A GRAND JURY. THAT'S WHY THIS
6 GATEKEEPER ROLE IS VERY, VERY IMPORTANT.

7 YOU'RE NOT PART OF THE PROSECUTING ARM. YOU'RE
8 INTENDED TO BE A BUFFER INDEPENDENT OF THE U.S. ATTORNEY'S
9 OFFICE. AND THE REAL ROLE OF THE GRAND JURY IS TO MAKE SURE
10 THAT UNSUBSTANTIATED CHARGES DON'T GO FORWARD.

11 YOU'VE HEARD MY GENERAL COMMENTS. YOU HAVE AN
12 APPRECIATION ABOUT HOW AN UNSUBSTANTIATED CHARGE COULD CAUSE
13 PROBLEMS FOR SOMEONE EVEN IF THEY'RE ULTIMATELY ACQUITTED.

14 YOU APPRECIATE THAT; RIGHT?

15 PROSPECTIVE JUROR: I THINK I COULD APPRECIATE THAT,
16 YES.

17 THE COURT: AND SO WE'RE -- LOOK, I'LL BE HONEST
18 WITH YOU. THE GREAT MAJORITY OF THE CHARGES THAT THE GRAND
19 JURY PASSES ON THAT ARE PRESENTED BY THE U.S. ATTORNEY'S
20 OFFICE DO GO FORWARD. MOST OF THE TIME, THE GRAND JURY PUTS
21 ITS SEAL OF APPROVAL ON THE INITIAL DECISION MADE BY THE U.S.
22 ATTORNEY.

23 OBVIOUSLY, I WOULD SCREEN SOMEBODY OUT WHO SAYS, "I
24 DON'T CARE ABOUT THE EVIDENCE. I'M NOT GOING TO PAY ATTENTION
25 TO THE EVIDENCE. IF THE U.S. ATTORNEY SAYS IT'S GOOD, I'M

COMPUTER-AIDED TRANSCRIPTION

1 GOING TO GO WITH THAT." IT DIDN'T SOUND LIKE THAT'S WHAT YOU
2 WERE SAYING. YOU WERE SAYING YOU GIVE A PRESUMPTION OF GOOD
3 FAITH TO THE U.S. ATTORNEY AND ASSUME, QUITE LOGICALLY, THAT
4 THEY'RE NOT ABOUT THE BUSINESS OF TRYING TO INDICT INNOCENT
5 PEOPLE OR PEOPLE THAT THEY BELIEVE TO BE INNOCENT OR THE
6 EVIDENCE DOESN'T SUBSTANTIATE THE CHARGES AGAINST. THAT'S
7 WELL AND GOOD.

8 YOU MUST UNDERSTAND THAT AS A MEMBER OF THE GRAND
9 JURY, YOU'RE THE ULTIMATE ARBITER. THEY DON'T HAVE THE
10 AUTHORITY TO HAVE A CASE GO FORWARD WITHOUT YOU AND FELLOW
11 GRAND JURORS' APPROVAL. I WOULD WANT YOU NOT TO JUST
12 AUTOMATICALLY DEFER TO THEM OR SURRENDER THE FUNCTION AND
13 GIVER THE INDICTMENT DECISION TO THE U.S. ATTORNEY. YOU HAVE
14 TO MAKE THAT INDEPENDENTLY.

15 YOU'RE WILLING TO DO THAT IF YOU'RE RETAINED HERE?

16 PROSPECTIVE JUROR: I'M NOT A PERSON THAT THINKS OF
17 ANYBODY IN THE BACK OF A POLICE CAR AS NECESSARILY GUILTY, AND
18 I WOULD DO MY BEST TO GO AHEAD AND BE OBJECTIVE. BUT AGAIN,
19 JUST IN THE NAME OF FULL DISCLOSURE, I FELT LIKE I SHOULD LET
20 YOU KNOW THAT I HAVE A VERY STRONG PRESUMPTION WITH RESPECT TO
21 ANY DEFENDANT THAT WOULD BE BROUGHT IN FRONT OF US.

22 THE COURT: I UNDERSTAND WHAT YOU'RE SAYING. LET ME
23 TELL YOU THE PROCESS WILL WORK MECHANICALLY. THEY'RE GOING TO
24 CALL WITNESSES. AND WHAT THEY'RE GOING TO ASK YOU TO DO IS
25 EVALUATE THE TESTIMONY YOU HEAR FROM WITNESSES.

1 BEFORE YOU REACH A POINT WHERE YOU VOTE ON ANY
2 INDICTMENT, THE U.S. ATTORNEY AND THE STENOGRAPHER LEAVE. THE
3 ONLY PEOPLE LEFT WHEN THE VOTE IS TAKEN ARE THE GRAND JURORS
4 THEMSELVES. THAT'S THE WAY THE PROCESS IS GOING TO WORK.

5 YOU'RE GOING TO HAVE TO SAY EITHER "WELL, IT HAS THE
6 RING OF TRUTH TO ME, AND I THINK IT HAPPENED THE WAY IT'S
7 BEING SUGGESTED HERE. AT LEAST I'M CONVINCED ENOUGH TO LET
8 THE CASE GO FORWARD" OR "THINGS JUST DON'T HAPPEN LIKE THAT IN
9 MY EXPERIENCE, AND I THINK THIS SOUNDS CRAZY TO ME. I WANT
10 EITHER MORE EVIDENCE OR I'M NOT CONVINCED BY WHAT'S BEEN
11 PRESENTED AND I'M NOT GOING TO LET IT GO FORWARD."

12 CAN YOU MAKE AN OBJECTIVE ON FACTS LIKE THE ONES
13 I'VE JUST DESCRIBED?

14 PROSPECTIVE JUROR: I WOULD DO MY BEST TO DO THAT.
15 I CERTAINLY WOULD WANT ME SITTING ON A GRAND JURY IF I WERE A
16 DEFENDANT COMING BEFORE THIS GRAND JURY. HAVING SAID THAT, I
17 WOULD DO MY BEST. I HAVE TO ADMIT TO A STRONG BIAS IN FAVOR
18 OF THE U.S. ATTORNEY THAT I'M NOT SURE I COULD OVERCOME.

19 THE COURT: ALL I'M TRYING TO GET AT IS WHETHER
20 YOU'RE GOING TO AUTOMATICALLY VOTE TO INDICT IRRESPECTIVE OF
21 THE FACTS.

22 A FEW YEARS AGO, I IMPANELED A FELLOW HERE THAT WAS
23 A SERGEANT ON THE SHERIFF'S DEPARTMENT. AND YEARS AGO WHEN I
24 WAS A PROSECUTOR, I WORKED WITH HIM. HE WAS ALL ABOUT
25 ARRESTING AND PROSECUTING PEOPLE. BUT WHEN HE GOT HERE, HE

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1 SAID, "LOOK, I UNDERSTAND THAT THIS IS A DIFFERENT FUNCTION.
2 I CAN PERFORM THAT FUNCTION." HE SERVED FAITHFULLY AND WELL
3 FOR A NUMBER OF -- OVER A YEAR, I THINK. 18 MONTHS, MAYBE.
4 HE EVENTUALLY GOT A PROMOTION, SO WE RELIEVED HIM FROM THE
5 GRAND JURY SERVICE.

6 BUT, YOU KNOW, HE TOOK OFF ONE HAT AND ONE UNIFORM
7 AND PUT ON A DIFFERENT HAT ON THE DAYS HE REPORTED TO THE
8 GRAND JURY. HE WAS A POLICEMAN. HE'D BEEN INVOLVED IN
9 PROSECUTING CASES. BUT HE UNDERSTOOD THAT THE FUNCTION HE WAS
10 PERFORMING HERE WAS DIFFERENT, THAT IT REQUIRED HIM TO
11 INDEPENDENTLY AND OBJECTIVELY ANALYZE CASES AND ASSURED ME
12 THAT HE COULD DO THAT, THAT HE WOULD NOT AUTOMATICALLY VOTE TO
13 INDICT JUST BECAUSE THE U.S. ATTORNEY SAID SO.

14 AGAIN, I DON'T WANT TO PUT WORDS IN YOUR MOUTH. BUT
15 I DON'T HEAR YOU SAYING THAT THAT'S THE EXTREME POSITION THAT
16 YOU HAVE. I HEAR YOU SAYING INSTEAD THAT COMMON SENSE AND
17 YOUR EXPERIENCE TELLS YOU THE U.S. ATTORNEY'S NOT GOING TO
18 WASTE TIME ON CASES THAT LACK MERIT. THE CONSCIENTIOUS PEOPLE
19 WHO WORK FOR THE U.S. ATTORNEY'S OFFICE AREN'T GOING TO TRY TO
20 TRUMP UP PHONY CHARGES AGAINST PEOPLE.

21 MY ANECDOTAL EXPERIENCE SUPPORTS THAT, TOO. THAT
22 DOESN'T MEAN THAT EVERY CASE THAT COMES IN FRONT OF ME I SAY,
23 "WELL, THE U.S. ATTORNEY'S ON THIS. THE PERSON MUST BE
24 GUILTY." I CAN'T DO THAT. I LOOK AT THE CASES STAND-ALONE,
25 INDEPENDENT, AND I EVALUATE THE FACTS. I DO WHAT I'M CHARGED

1 WITH DOING, WHICH IS MAKING A DECISION BASED ON THE EVIDENCE
2 THAT'S PRESENTED.

3 SO THAT'S THE QUESTION I HAVE FOR YOU. I CAN
4 UNDERSTAND THE DEFERENCE TO THE U.S. ATTORNEY. AND FRANKLY, I
5 AGREE WITH THE THINGS THAT YOU'RE SAYING. THEY MAKE SENSE TO
6 ME. BUT AT THE END OF THE DAY, YOUR OBLIGATION IS STILL TO
7 LOOK AT THESE CASES INDEPENDENTLY AND FORM AN INDEPENDENT
8 CONSCIENTIOUS BUSINESS-LIKE JUDGMENT ON THE TWO QUESTIONS THAT
9 I'VE MENTIONED EARLIER: DO I HAVE A REASONABLE BELIEF THAT A
10 CRIME WAS COMMITTED? DO I HAVE A REASONABLE BELIEF THAT THE
11 PERSON TO BE CHARGED COMMITTED IT OR HELPED COMMIT IT?

12 CAN YOU DO THAT?

13 PROSPECTIVE JUROR: AGAIN, I WOULD DO MY BEST TO DO
14 THAT. BUT I DO BRING A VERY, VERY STRONG BIAS. I BELIEVE
15 THAT, FOR EXAMPLE, THE U.S. ATTORNEY WOULD HAVE OTHER FACTS
16 THAT WOULD RISE TO LEVEL THAT THEY'D BE ABLE TO PRESENT TO US
17 THAT WOULD BEAR ON THE TRIAL. I WOULD LOOK AT THE CASE AND
18 PRESUME AND BELIEVE THAT THERE ARE OTHER FACTS OUT THERE THAT
19 AREN'T PRESENTED TO US THAT WOULD ALSO BEAR ON TAKING THE CASE
20 TO TRIAL. I'D HAVE A VERY DIFFICULT TIME.

21 THE COURT: YOU WOULDN'T BE ABLE TO DO THAT. WE
22 WOULDN'T WANT YOU TO SPECULATE THAT THERE'S OTHER FACTS THAT
23 HAVEN'T BEEN PRESENTED TO YOU. YOU HAVE TO MAKE A DECISION
24 BASED ON WHAT'S BEEN PRESENTED.

25 BUT LOOK, I CAN TELL YOU I IMAGINE THERE'S PEOPLE IN

1 THE U.S. ATTORNEY'S OFFICE THAT DISAGREE WITH ONE ANOTHER
2 ABOUT THE MERITORIOUSNESS OF A CASE OR WHETHER A CASE CAN BE
3 WON AT A JURY TRIAL.

4 IS THAT RIGHT, MR. ROBINSON?

5 MR. ROBINSON: ON OCCASION, YOUR HONOR. NOT VERY
6 OFTEN.

7 THE COURT: IT COMES UP EVEN IN AN OFFICE WITH
8 PEOPLE CHARGED WITH THE SAME FUNCTION. I DON'T WANT TO BEAT
9 YOU UP ON THIS. [REDACTED] I'M EQUALLY CONCERNED WITH
-10 SOMEBODY WHO WOULD SAY, "I'M GOING TO AUTOMATICALLY DROP THE
11 TRAP DOOR ON ANYBODY THE U.S ATTORNEY ASKS." I WOULDN'T WANT
12 YOU TO DO THAT. IF YOU THINK THERE'S A POSSIBILITY YOU'LL DO
13 THAT, THEN I'D BE INCLINED TO EXCUSE YOU.

14 PROSPECTIVE JUROR: I THINK THAT THERE'S A
15 POSSIBILITY I WOULD BE INCLINED TO DO THAT.

16 THE COURT: I'M GOING TO EXCUSE YOU, THEN. THANK
17 YOU.. I APPRECIATE YOUR ANSWERS.

18 LADIES AND GENTLEMEN, IF YOU'LL GIVE ME JUST A SHORT
19 PAUSE. I'M GOING TO RECESS THIS PROCEEDING. I HAVE A JURY
20 TRIAL OUT. THE JURY HAS SENT A QUESTION. I'M GOING TO
21 DISCUSS HOW TO ANSWER THE QUESTION WITH COUNSEL. YOU'RE ALL
22 WELCOME TO STAY AND LISTEN TO THIS. WE'LL BE IN RECESS
23 MOMENTARILY.

24 ---000---

25 THE COURT: NOW BACK TO THE GRAND JURY IMPANELMENT.

1 AND WE WERE ABOUT TO CALL A REPLACEMENT FOR

2 [REDACTED]

3 THE CLERK: [REDACTED]

4 THE COURT: GOOD MORNING, [REDACTED]

5 PROSPECTIVE JUROR: GOOD MORNING. MY NAME IS

6 [REDACTED] I LIVE IN [REDACTED]

7 I'M RETIRED. MARRIED FOR [REDACTED] YEARS.

8 THE COURT: GOOD FOR YOU. YOU KNOW WHAT THEY SAY
9 ABOUT THAT. THE REASON THAT COUPLES CAN STICK TOGETHER THAT
10 LONG, ALL THOSE YEARS YOU'VE BOTH BEEN IN LOVE WITH THE SAME
11 MAN.

12 PROSPECTIVE JUROR: MY HUSBAND [REDACTED]

13 [REDACTED]

14 THE COURT: [REDACTED]

15 PROSPECTIVE JUROR: AND HE'S BEEN [REDACTED]

16 [REDACTED]

17 THE COURT: HE'S AN ALUMNUS OF THE [REDACTED]

18 [REDACTED] HE WENT TO [REDACTED]

19 PROSPECTIVE JUROR: I WENT TO [REDACTED] COLLEGE.

20 THE COURT: I'M A GRADUATE OF PT. LOMA COLLEGE.

21 PROBABLY A LITTLE BEFORE YOU.

22 PROSPECTIVE JUROR: I DON'T THINK SO.

23 I HAVE [REDACTED] ADULT CHILDREN. MY [REDACTED] WORKS FOR

24 [REDACTED] SHE'S IN [REDACTED]

25 [REDACTED] ONE [REDACTED] WORKS WITH [REDACTED] AND I HAVE A [REDACTED] WHO

1 WORKS FOR [REDACTED]

2 THE COURT: IS HE AN [REDACTED]

3 PROSPECTIVE JUROR: [REDACTED] HE WORKS FOR THE

4 [REDACTED]

5 I'VE BEEN ON TWO TRIALS: ONE WAS A MUNICIPAL COURT
6 TRIAL. IT WASN'T CRIMINAL. MONEY WAS INVOLVED. AND THE
7 OTHER ONE WAS A CRIMINAL. AND THE FIRST ONE WAS IN THE '80'S
8 SOMETIME. THE LAST ONE WAS PROBABLY TEN YEARS AGO. AND YES,
9 I CAN BE FAIR.

10 THE COURT: HOW'S THE [REDACTED] GOING.

11 PROSPECTIVE JUROR: VERY WELL.

12 THE COURT: WHEN I WAS STILL A COLLEGE STUDENT, WE
13 HAD EMBARKED UPON A SPEAKERS PROGRAM. I GOT TOGETHER WITH
14 [REDACTED] AT [REDACTED] AND WE MADE AN ARRANGEMENT
15 WHERE THE SPEAKERS WOULD COME. AND THESE WERE [REDACTED]
16 THE [REDACTED] DRAWS IN PEOPLE OF STATURE THAT HAVE SOMETHING
17 IMPORTANT TO SAY.

18 WE USED TO HAVE THEM STAY AT THE [REDACTED] AND THE
19 [REDACTED] SAID THAT "IF THEY'LL POSE FOR A PICTURE HERE AT THE
20 [REDACTED] THEN ALL THE ACCOMMODATIONS ARE ON US," WHICH WAS A
21 GREAT ACCOMMODATION FOR OUR LITTLE TINY SPEAKERS PROGRAM. BUT
22 THEY WOULD SPEAK AT THE COLLEGE THE NIGHT BEFORE BACK IN 1976,
23 AND THEN THEY'D GO TO [REDACTED] THE NEXT DAY.

24 SO I HAVE FOND MEMORIES OF THAT. PLEASE GIVE [REDACTED]

25 [REDACTED] MY REGARDS.

1 PROSPECTIVE JUROR: I WILL.

2 THE COURT: [REDACTED]

3 PROSPECTIVE JUROR: I'M [REDACTED] I LIVE IN

4 [REDACTED] YEARS IN THE NAVY AS A NAVAL AVIATOR.

5 28 YEARS IN INDUSTRY, IN R&D, DEFENSE INDUSTRY. I'M MARRIED.

6 MY WIFE IS [REDACTED] SHE DID [REDACTED] ADULT

7 CHILDREN, ALL OVER 40: [REDACTED] OF THEM PRODUCED CHILDREN FOR A

8 LIVING, I THINK. MY DAUGHTER IS [REDACTED] IN [REDACTED] I HAVE A [REDACTED]

9 UP IN THE BAY AREA WHO'S IN [REDACTED] AND ONE [REDACTED]

10 [REDACTED] IN [REDACTED] WHO DOES [REDACTED] FOR [REDACTED]

11 [REDACTED] ONE'S A [REDACTED] WHO [REDACTED] AT

12 [REDACTED] AND [REDACTED] THE [REDACTED] I

13 HAVE BEEN SELECTED AND BOUNCED OFF A NUMBER OF FEDERAL AND

14 STATE JURIES, BUT I DID SERVE ON ONE CIVIL CASE IN THE

15 SUPERIOR COURT. I UNDERSTAND THE DISTINCTION BETWEEN THAT

16 WORK AND THE GRAND JURY.

17 THE COURT: THE BASIS FOR BOUNCING YOU, WERE YOU PRO

18 PROSECUTION OR PRO DEFENSE?

19 PROSPECTIVE JUROR: I THINK HALF THE TIME IT WAS

20 JUST THE MILITARY EXPERIENCE. THE STORY IS IN COURT MARTIAL,

21 IF IT WEREN'T TRUE, THEY WOULDN'T HAVE CHARGED THEM TYPE OF

22 THING.

23 THE COURT: YOU HEARD [REDACTED] HE ADHERED TO THAT

24 KIND OF BELIEF IN THIS CIVILIAN PROCEEDING.

25 YOU'RE NOT OF THAT FRAME OF MIND?

1 PROSPECTIVE JUROR: NO.

2 THE COURT: IT'S UNFAIR TO ASK YOU WHY YOU WERE
3 BOUNCED. I'D HAVE TO ASK THE LAWYERS. WHEN WE PICK TRIAL
4 JURIES A LOT OF TIME, SOME PEOPLE -- I TALK TO PEOPLE LIKE MY
5 NEIGHBORS AND ALL. THEY SAY, "THEY BOUNCED ME OFF." THEY'RE
6 UPSET ABOUT IT. AND I TRY TO ASSUAGE THEM BY SAYING, "LOOK,
7 LET ME TELL YOU SOMETHING." AND THIS IS IN A TRIAL JURY
8 CONTEXT. "IT REALLY SAYS MORE ABOUT THE LAWYER THAN IT DOES
9 ABOUT YOU. BECAUSE LAWYERS HAVE THESE IDEAS OF WHO THEY WANT
10 ON A JURY OR WHAT THE COMPOSITION OF THE JURY OUGHT TO BE."

11 EVA'S HEARD ME TELL THIS STORY BEFORE. WHEN I WAS A
12 YOUNG LAWYER TRYING CASES JUST STARTING OUT, MY RULE OF THUMB
13 AS TO THE TEN CHALLENGES I HAD WAS NO ONE YOUNGER THAN I AM.
14 IF THEY'RE YOUNGER THAN I AM, THEY HAVEN'T HAD TO MAKE HARD
15 DECISIONS. THEY DON'T HAVE A SUFFICIENT STAKE IN THE
16 COMMUNITY. I COULD RATTLE OFF THREE OR FOUR JUSTIFICATIONS
17 FOR IT.

18 THE TRUTH OF THE MATTER IS I PROBABLY BOUNCED A LOT
19 OF PEOPLE THAT WOULD HAVE BEEN FINE. IT REALLY ILLUSTRATES
20 THE POINT THAT IT SAYS MORE ABOUT THE LAWYER THAN IT SAYS
21 ABOUT THE PERSON BEING BOUNCED.

22 THANK YOU, [REDACTED] I APPRECIATE YOUR ANSWERS.

23

24 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
25 LIVE IN [REDACTED] I'M A PRODUCTION SCHEDULER. I'M

1 MARRIED. MY WIFE [REDACTED] I HAVE [REDACTED]
2 BOYS FROM [REDACTED] TO [REDACTED]

3 THE COURT: YOU POOR SOUL.

4 PROSPECTIVE JUROR: I HAVE NO TRIAL EXPERIENCE, AND
5 I COULD BE FAIR.

6 THE COURT: MY GOODNESS.

7 WHAT'S THE AGE SPAN BETWEEN YOUR BOYS?

8 PROSPECTIVE JUROR: FROM [REDACTED] TO [REDACTED] THEY KEEP ME VERY
9 BUSY.

10 THE COURT: I RAISED TWO THAT WERE TWO YEARS APART,
11 AND THAT KEPT ME RUNNING ALL THE TIME.

12 YOU HAVE [REDACTED] HUH?

13 PROSPECTIVE JUROR: WE TRIED FOR A GIRL, AND IT
14 NEVER WORKED.

15 THE COURT: DO YOU HAVE BROTHERS AND SISTERS?

16 PROSPECTIVE JUROR: I HAVE ANOTHER BROTHER AND TWO
17 SISTERS.

18 THE COURT: HIGH INCIDENCE OF BOYS IN YOUR FAMILY?

19 PROSPECTIVE JUROR: VERY MUCH.

20 THE COURT: DID YOUR MOTHER HAVE A LOT OF BOYS, TOO?

21 PROSPECTIVE JUROR: MY SISTER HAS [REDACTED] BUT MY
22 COUSINS, IT'S LIKE [REDACTED] BOYS AND [REDACTED] GIRLS.

23 THE COURT: IT MUST BE SOMETHING IN ONE'S GENETIC
24 CODE. WE HAVE TO ASK THE DOCTOR, THE GENETICIST, ABOUT IT.

25 MY FAMILY TREE RUNS THE SAME WAY, ALMOST ALL BOYS. ALL OF US

1 KNOCK OUT BOYS. I DIDN'T KEEP GOING.

2 PROSPECTIVE JUROR: I'M DONE.

3 THE COURT: THANK YOU, [REDACTED]

4 [REDACTED]

5 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE

6 IN [REDACTED] I'M A REGISTERED NURSE. I'M MARRIED.

7 WE HAVE [REDACTED] ADULT CHILDREN. MY HUSBAND WORKS FOR [REDACTED]

8 [REDACTED] HE'S A [REDACTED]

9 [REDACTED] ONE [REDACTED] IS A [REDACTED] WHO WORKS

10 FOR [REDACTED] A [REDACTED] IS [REDACTED] AND ANOTHER [REDACTED] IS

11 AN [REDACTED] AND ONE [REDACTED] IS A [REDACTED]

12 [REDACTED] I HAVE NO EXPERIENCE AS A JUROR. AND I THINK I

13 CAN BE FAIR.

14 THE COURT: [REDACTED] YOU'RE GOING TO HEAR CASES,

15 I'M SURE, INVOLVING AGENTS [REDACTED]

16 YOU SAID YOUR OTHER SON IS A [REDACTED]

17 PROSPECTIVE JUROR: HE'S AN [REDACTED]

18 THE COURT: ONE'S AN [REDACTED] AND THE OTHER

19 IS.

20 PROSPECTIVE JUROR: A [REDACTED]

21 THE COURT: I THOUGHT YOU HAD TWO [REDACTED]

22 [REDACTED]

23 JUST ONE?

24 PROSPECTIVE JUROR: MY HUSBAND WORKS FOR [REDACTED] AND

25 [REDACTED]

1 THE COURT: YOU'RE GOING TO BE HEARING CASES FROM
2 [REDACTED] AND [REDACTED]

3 CAN YOU BE OBJECTIVE ABOUT THOSE CASES? CAN YOU
4 LISTEN TO THE FACTS AND MAKE A STAND-ALONE DECISION ON EACH
5 CASE WITHOUT INSTINCTIVELY SAYING, "WELL, THEY WORK FOR THE
6 [REDACTED] AS MY SON OR MY HUSBAND."

7 PROSPECTIVE JUROR: I THINK I CAN BE FAIR.

8 THE COURT: THAT WOULD BE YOUR OBLIGATION. YOU'RE
9 NOT AUTOMATICALLY DISQUALIFIED. AS YOU HEARD ME SAY, WE HAD A
10 SERGEANT ON THE SHERIFF'S DEPARTMENT THAT WAS SERVING ON ONE
11 OF OUR GRAND JURIES. SO IT'S NOT AUTOMATICALLY DISQUALIFYING.
12 BUT YOU HAVE TO BE ABLE TO ASSURE ME THAT "I'LL LOOK AT THESE
13 CASES INDEPENDENTLY. I UNDERSTAND THE IMPORTANCE OF ACTING AS
14 A BUFFER BETWEEN THE GOVERNMENT'S POWER TO CHARGE SOMEONE WITH
15 A CRIME AND THEN BRINGING THEM TO TRIAL. AND I'LL FULFILL
16 THAT FUNCTION CONSCIENTIOUSLY."

17 YOU CAN DO THAT?

18 PROSPECTIVE JUROR: I CAN DO THAT.

19 THE COURT: THANK YOU.

20

21 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
22 IN [REDACTED] I'M A TRAFFIC ENGINEER WITH THE
23 CITY OF [REDACTED]

24 THE COURT: MAYBE YOU CAN GET THOSE TELEPHONE POLES
25 DOWN. I HAVE A BIG POLE RIGHT ON THE LEFT SIDE. I JUST READ

1 IN THE PAPER THAT WE'RE GOING TO PAY MORE FOR OUR TELEPHONE
2 BILLS SO THAT THEY CAN TAKE ALL THESE POLES DOWN, AND I
3 EXPECTED TO HEAR THAT CHAINSAWS THE NEXT MORNING. YOU CAN BET
4 WHEN THE NEXT BILL COMES, I'M GOING TO HAVE THE ASSESSMENT.

5 YOU DON'T KNOW ANYTHING ABOUT THAT?

6 PROSPECTIVE JUROR: THE PEOPLE IN THE UTILITIES
7 PROGRAM KNOW.

8 I'M NOT MARRIED. I DON'T HAVE ANY CHILDREN. I WAS
9 JUST ON A CRIMINAL CASE IN THE SUPERIOR COURT JUST LAST MONTH.
10 SO I'M GETTING HIT AGAIN HERE. AND I UNDERSTAND THE
11 DIFFERENCE BETWEEN TRIAL AND --

12 THE COURT: I WAS GOING TO SAY, YOU MUST BE
13 REPORTING EARLY AND OFTEN IF YOU'VE BEEN CALLED FOR BOTH STATE
14 AND FEDERAL SERVICE AT THE SAME TIME.

15 PROSPECTIVE JUROR: I CAN BE FAIR.

16 THE COURT: THANK YOU, [REDACTED]

17 [REDACTED]
18 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE

19 IN [REDACTED] I'M AN INVESTIGATOR AND HOUSING COORDINATOR
20 FOR THE [REDACTED] I'M

21 MARRIED FOR 12 YEARS. MY HUSBAND IS [REDACTED] WE
22 DON'T HAVE CHILDREN BY CHOICE. I DON'T HAVE ANY EXPERIENCE IN
23 THE COURT SYSTEM. I CAN BE FAIR. IT WOULD BE AN HONOR,
24 SIR.

25 THE COURT: THANK YOU. I APPRECIATE YOUR ANSWERS.

1 [REDACTED]
2 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I
3 LIVE IN [REDACTED] I'M A CHILDCARE WORKER/MENTAL HEALTH
4 WORKER WORKING WITH ABUSED -- PHYSICALLY AND SEXUALLY ABUSED
5 CHILDREN. I'M NOT MARRIED. I DON'T HAVE ANY KIDS. I DON'T
6 HAVE ANY EXPERIENCE AS A TRIAL JUROR. YES, I CAN BE FAIR.

7 THE COURT: THANK YOU, [REDACTED]

8 [REDACTED]
9 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE IN
10 [REDACTED] CALIFORNIA. THAT'S [REDACTED]

11 THE COURT: WELCOME.

12 PROSPECTIVE JUROR: I'M AN AIRCRAFT MECHANIC FOR
13 [REDACTED] I'M MARRIED. MY WIFE IS A
14 [REDACTED]

15 THE COURT: DO YOU HAVE ANY LAW ENFORCEMENT FUNCTION
16 AT ALL?

17 PROSPECTIVE JUROR: I'M [REDACTED]
18 I HAVE TWO ADULT BOYS. AND I HAVE NO EXPERIENCE IN
19 FEDERAL COURT. AND I CAN BE FAIR.

20 THE COURT: YOU CAN EVALUATE THESE CASES
21 INDEPENDENTLY? YOU'RE ACTING AS A CITIZEN AND NOT SO MUCH AS
22 A [REDACTED] DO YOU UNDERSTAND THAT?

23 PROSPECTIVE JUROR: YES.

24 THE COURT: [REDACTED] IS THE [REDACTED]
25 CALIFORNIA?

1 PROSPECTIVE JUROR: THAT'S ABOUT IT.

2 THE COURT: MY SON JUST WENT OVER TO THE [REDACTED]
3 [REDACTED] AT [REDACTED] WE DROVE HIM IN THE SUMMER. I WANTED
4 TO GET OVER THERE QUICKLY. SOMEBODY WARNED ME AFTERWARDS THAT
5 THEY'RE A VERY AGGRESSIVE [REDACTED] HIGHWAY PATROL.

6 PROSPECTIVE JUROR: THEY'RE OUT THERE.

7 THE COURT: CAN I USE YOUR NAME IN CASE I GET
8 STOPPED?

9 THANK YOU, [REDACTED]

10 [REDACTED]

11 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
12 IN [REDACTED] I DO CONVENTION SERVICES AT THE [REDACTED] IN
13 [REDACTED] I'M NOT MARRIED. I HAVE NO KIDS. I DON'T HAVE ANY
14 EXPERIENCE AS A TRIAL JUROR. AND I COULD BE FAIR.

15 THE COURT: THANK YOU. WE'RE GLAD TO HAVE YOU.

16 [REDACTED]

17 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE IN
18 [REDACTED] MY WIFE AND I ARE BOTH RETIRED. WE HAVE [REDACTED]
19 ADULT CHILDREN.

20 THE COURT: WHAT WAS YOUR WORK BEFORE YOU RETIRED?

21 PROSPECTIVE JUROR: I WAS [REDACTED] YEARS AN EDUCATOR.

22 AND WE HAVE NINE GRANDCHILDREN. OUR IMMEDIATE ADULT
23 CHILDREN, ONE IS A SUCCESSFUL [REDACTED] ONE IS A
24 SUCCESSFUL [REDACTED] MY [REDACTED] [REDACTED] OF
25 [REDACTED] IN [REDACTED] AND PART OF [REDACTED] AND

1 UNFORTUNATELY, MY OTHER SON HAS [REDACTED] HE HAS BEEN
2 [REDACTED] FOR SEVERAL YEARS. I'VE HAD EXPERIENCE ON ONE
3 TRIAL. IT WAS A CRIMINAL CASE AT THE VISTA COURTHOUSE. AND I
4 CERTAINLY CAN BE FAIR.

5 THE COURT: THANK YOU.

6 [REDACTED] GOOD AFTERNOON.

7 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE IN
8 [REDACTED] I'M MARRIED. I HAVE [REDACTED] CHILDREN. ONE IS A
9 [REDACTED] MY WIFE IS A [REDACTED] IN [REDACTED]
10 [REDACTED] MY SON IS A [REDACTED] AT [REDACTED]

11 [REDACTED] I'M A CONTRACT OFFICER FOR THE NAVY WORKING AT THE
12 [REDACTED] AT [REDACTED] AND I'VE BEEN CALLED
13 THREE TIMES. I'VE NEVER BEEN IMPANELED ON A JURY. I'VE
14 STATED MY PRO POLICE VIEWS.

15 THE COURT: YOU CAN SERVE IN THIS FUNCTION AS A
16 GRAND JUROR OBJECTIVELY, LOOK AT THE EVIDENCE, AND ANSWER THE
17 QUESTIONS THAT I'VE REPEATED NOW SEVERAL TIMES: DO I HAVE A
18 REASONABLE BELIEF THAT A CRIME WAS COMMITTED? DO I HAVE A
19 REASONABLE BELIEF THAT THE PERSON THEY WANT ME TO INDICT
20 EITHER COMMITTED THE CRIME OR ASSISTED WITH IT?

21 PROSPECTIVE JUROR: YES, SIR.

22 THE COURT: THANK YOU, [REDACTED]

23 [REDACTED]
24 PROSPECTIVE JUROR: [REDACTED] I LIVE IN [REDACTED]
25 [REDACTED]

1 THE COURT: HOW IS THAT?

2 PROSPECTIVE JUROR: I LOVE BEING [REDACTED] I WOULD
3 HAVE WALKED TODAY, EXCEPT I THINK IT'S GOING TO RAIN.

4 I'M A CPA. I'M MARRIED. NO CHILDREN. AND I HAVE
5 NEVER SERVED ON A JURY. AND I CAN BE FAIR.

6 THE COURT: THANK YOU [REDACTED]
7 [REDACTED]

8 PROSPECTIVE JUROR: [REDACTED] I LIVE IN

9 [REDACTED] I DO NOT WORK. I'VE BEEN MARRIED FOR

10 [REDACTED] YEARS. MY HUSBAND IS RETIRED FROM THE [REDACTED]

11 BUT NOW IS A [REDACTED]
12 [REDACTED]

13 THE COURT: WHAT WAS HIS JOB WITH THE [REDACTED]
14 [REDACTED]

15 PROSPECTIVE JUROR: HE WAS A [REDACTED]

16 [REDACTED] BUT ALWAYS WORKED IN [REDACTED]
17 [REDACTED] [REDACTED]

18 THE COURT: WHAT DOES HE DO NOW AS A [REDACTED] WITH

19 THE [REDACTED]

20 PROSPECTIVE JUROR: HE'S A [REDACTED] EMPLOYEE. HE

21 WORKS IN [REDACTED] AND THEN, FOR EXAMPLE, [REDACTED] HE'LL
22 BE WORKING [REDACTED] AT THE [REDACTED]

23 THE COURT: LET'S HOPE THEY WIN THAT GAME.

24 PROSPECTIVE JUROR: YES.

25 THE COURT: I'M A LITTLE WORRIED ABOUT IT. I WAS

1 TORN WITH THE KANSAS CITY CHIEFS. I WAS HOPING -- I THOUGHT
2 THEY WOULD BE THE EASIER TEAM FOR THE CHARGERS TO BEAT.

3 PROSPECTIVE JUROR: WE HAVE [REDACTED] ADULT [REDACTED] AND
4 [REDACTED] GRANDCHILDREN. OUR [REDACTED] IS A [REDACTED] AND [REDACTED]
5 [REDACTED] FOR [REDACTED]
6 [REDACTED]. OUR [REDACTED] IS A [REDACTED] FOR
7 [REDACTED] COMPANY IN [REDACTED] I'VE BEEN CALLED, BUT NEVER
8 SERVED ON A JURY. YES, I COULD BE FAIR.

9 THE COURT: YOU SAY THAT MINDFUL OF EVERYTHING YOU
10 LEARNED ON THE TAPE AND ALL THE QUESTIONS AND ANSWERS THAT
11 HAVE BEEN GIVEN SO FAR?

12 PROSPECTIVE JUROR: YES.

13 THE COURT: [REDACTED]

14 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
15 IN THE [REDACTED] I'M UNEMPLOYED AT THE CURRENT
16 TIME. I'M A HOUSEWIFE. I WAS A BOOKKEEPER FOR SEVERAL YEARS.
17 I'VE BEEN MARRIED FOR 19. MY SPOUSE IS A [REDACTED]
18 [REDACTED] WE HAVE [REDACTED] ADULT [REDACTED], BOTH WHO LIVE IN [REDACTED]
19 ONE WORKS IN [REDACTED] THE OTHER [REDACTED] I
20 THINK I WAS CALLED FOR TRIAL JURY OVER AT SUPERIOR COURT ABOUT
21 15 YEARS AGO, BUT I DON'T REMEMBER -- I DON'T THINK I WAS
22 IMPANELED, AT LEAST NOT THAT I REMEMBER. I LIKE THINGS TO
23 BALANCE OUT. I LIKE TO FIND HOW THINGS WORK. THAT'S WHY I
24 ENJOY WORKING WITH NUMBERS. I GREW UP ABOUT 20 MINUTES AWAY
25 FROM GILLETTE STADIUM.

1 THE COURT: YOU'RE WORRIED, TOO.

2 [REDACTED]

3 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
4 IN [REDACTED] NOW. I JUST MOVED DOWN THERE FROM
5 [REDACTED] I WORK FROM HOME AS A MORTGAGE BROKER, AND I'VE
6 DONE THAT FOR [REDACTED] YEARS. NO KIDS. NEVER BEEN MARRIED. I HAVE
7 BEEN CALLED FOR JURY DUTY, BUT NEVER PULLED UP FROM MAIN
8 SELECTION. AND YES, I CAN BE FAIR.

9 THE COURT: THANK YOU.

10 [REDACTED]

11 PROSPECTIVE JUROR: [REDACTED] I LIVE IN
12 [REDACTED] I DON'T WORK. I'M MARRIED. MY HUSBAND WORKS FOR
13 [REDACTED] I HAVE [REDACTED] KIDS. NO EXPERIENCE. AND
14 I CAN BE FAIR.

15 THE COURT: WHAT DOES HE DO FOR THE [REDACTED]

16 PROSPECTIVE JUROR: HE'S [REDACTED]

17 THE COURT: WAS HE A [REDACTED]

18 PROSPECTIVE JUROR: NO. HE [REDACTED] S.

19 HE'S [REDACTED] FOR A MILLION YEARS. HE TRAVELS. WE LIVE [REDACTED]
20 AND HE JUST TRAVELS.

21 THE COURT: WHERE DO THEY DO [REDACTED]

22 PROSPECTIVE JUROR: [REDACTED]

23 THE COURT: YOU JOIN HIM SOMETIMES FOR [REDACTED]

24 [REDACTED]

25 PROSPECTIVE JUROR: YES.

1 THE COURT: THANK YOU.

2

3 PROSPECTIVE JUROR: MY NAME IS [REDACTED]
4 I LIVE [REDACTED] I WORK AT A CHILDREN'S BOOK STORE IN
5 [REDACTED] I'M MARRIED. MY HUSBAND WORKS [REDACTED] MY
6 ADULT CHILDREN, MY OLDEST [REDACTED] GRADUATED FROM [REDACTED] AS
7 A [REDACTED] HE'S A [REDACTED]
8 [REDACTED] MY SECOND [REDACTED] GRADUATED FROM [REDACTED] HE'S
9 AN [REDACTED] I'VE BEEN CALLED TO JURY DUTY, BUT
10 NEVER IMPANELED. I CAN BE FAIR.

11 THE COURT: LET ME TEST MY MEMORY WITH YOU.

12 "WHERE THE WILD THINGS ARE."

13 PROSPECTIVE JUROR: [REDACTED]

14 THE COURT: IS THAT BOOK STILL VERY POPULAR?

15 PROSPECTIVE JUROR: VERY. I CAN'T KEEP IT ON THE
16 SHELF. THAT'S WHAT EVERYBODY WANTS FOR A BABY GIFT.

17 THE COURT: [REDACTED] DO YOU USE THAT BOOK WITH
18 YOUR BOYS?

19 PROSPECTIVE JUROR: YES.

20 THE COURT: THANK YOU.

21

22 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE
23 IN [REDACTED] I'M A TEACHER AND A COACH
24 FOR ADOLESCENT KIDS; HEALTH, P.E., LA CROSSE. I'M MARRIED.
25 MY SPOUSE IS [REDACTED] HE'S GONE BACK TO

1 SCHOOL. HE TINKERS IN THE [REDACTED] I DON'T HAVE ADULT
2 CHILDREN. I HAVE HAD EXPERIENCE IN CRIMINAL AND CIVIL CASES.

3 THE COURT: HOW MUCH EXPERIENCE? YOU'VE SAT ON BOTH
4 CRIMINAL AND CIVIL JURIES?

5 PROSPECTIVE JUROR: YES, SIR.

6 THE COURT: WHEN WAS YOUR MOST RECENT JURY
7 EXPERIENCE?

8 PROSPECTIVE JUROR: APPROXIMATELY FIVE YEARS AGO, A
9 CIVIL CASE.

10 THE COURT: LET ME PUT TO YOU THE QUESTION THAT I
11 PUT TO MANY WHO'VE HAD BOTH TYPES OF JURY EXPERIENCE.

12 YOU UNDERSTAND THE DISTINCTION HERE THAT THIS GRAND
13 JURY WOULD PERFORM A DIFFERENT FUNCTION FROM THE ONE --

14 PROSPECTIVE JUROR: I UNDERSTAND THAT.

15 THE COURT: AND [REDACTED] I WANT TO MAKE SURE I GOT
16 YOUR LAST ANSWER.

17 YOU CAN BE FAIR?

18 PROSPECTIVE JUROR: I CAN BE FAIR.

19 THE COURT: THANK YOU.

20 [REDACTED]
21 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I LIVE

22 IN [REDACTED] I'M A CATHOLIC DEACON AT A CHURCH [REDACTED]

23 [REDACTED] AND I'M ALSO PRESIDENT OF A COMPANY IN [REDACTED] THAT

24 MAKES [REDACTED] FOR [REDACTED] I'VE BEEN MARRIED FOR

25 [REDACTED] YEARS. MY WIFE IS A [REDACTED] SHE [REDACTED]

1 WORK. I HAVE [REDACTED] ADULT CHILDREN AND TWO GRANDCHILDREN. MY
2 [REDACTED] IS A [REDACTED] FOR [REDACTED] THE [REDACTED] MY
3 [REDACTED] DOES [REDACTED] ON [REDACTED] AT [REDACTED] AT
4 [REDACTED] AND HE'S PRESENTLY [REDACTED] AS WE DISCUSSED.
5 TEN YEARS AGO, I WAS A JUROR ON A CIVIL CASE. AND I HAVE TO
6 SAY I'M SOFT ON IMMIGRATION BECAUSE I'VE DONE VOLUNTEER WORK
7 WITH IMMIGRANTS IN THE FIELD. BUT I DO NOT THINK THAT WOULD
8 STAND IN MY WAY OF MAKING FAIR AND OBJECTIVE DECISIONS.

9 THE COURT: AS YOU HEARD ME EXPLAIN EARLIER TO ONE
10 OF THE PROSPECTIVE GRAND JURORS, WE'RE NOT ABOUT TRYING TO
11 CHANGE PEOPLE'S PHILOSOPHIES OR ATTITUDES HERE. THAT'S NOT MY
12 BUSINESS. BUT WHAT I HAVE TO INSIST ON IS THAT YOU FOLLOW THE
13 LAW THAT'S GIVEN TO US BY UNITED STATES CONGRESS. WE ENFORCE
14 THE FEDERAL LAWS HERE.

15 I THINK I CONFESSED ALOUD THAT THERE'S SOME OF THE
16 LAWS THAT I DISAGREE WITH THAT I HAVE TO ENFORCE. SO IT'S NOT
17 ABOUT ME OR MY PHILOSOPHIES. IT'S ABOUT PERFORMING A
18 CONSCIENTIOUS FUNCTION HERE AND SEEING IF THE FACTS SUPPORT AN
19 OUTCOME ONE WAY OR THE OTHER.

20 CAN YOU DO THAT?

21 PROSPECTIVE JUROR: I DON'T THINK I WOULD HAVE ANY
22 PROBLEM.

23 THE COURT: THANK YOU.

24 [REDACTED]
25 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I

1 LIVE IN [REDACTED] I HAVE WORKED AS A CHEMICAL ENGINEER, AS A
2 LAWYER, AS A SOCIAL WORKER, AND AS A LAW SCHOOL PROFESSOR.

3 THE COURT: WHAT WAS DISCIPLINE IN THE LAW? WERE
4 YOU AN INTELLECTUAL PROPERTY LAWYER?

5 PROSPECTIVE JUROR: NO. LABOR LAW AND PERSUASIVE
6 WRITING AT [REDACTED]

7 THE COURT: WHEN YOU PRACTICED, WHERE DID YOU
8 PRACTICE?

9 PROSPECTIVE JUROR: I WAS WITH CORPORATIONS IN
10 NEW YORK; [REDACTED] WHO BUILT THE [REDACTED]
11 [REDACTED] THAT I WAS INVOLVED IN. I WENT FROM THAT TO [REDACTED] WHO
12 BUILT THE [REDACTED] AND I WENT IN-HOUSE WITH [REDACTED]
13 [REDACTED] BUT I'VE ALSO BEEN WITH LARGE LAW FIRMS IN [REDACTED]
14 AND [REDACTED]

15 THE COURT: INTERESTING AND VARIED LEGAL CAREER,
16 HUH?

17 PROSPECTIVE JUROR: YES.

18 I'VE BEEN MARRIED FOR [REDACTED] YEARS TWICE AND NOT
19 DIVORCED. THAT ALSO ADDS UP TO [REDACTED] HAPPY YEARS. MY CURRENT
20 WIFE WORKS FOR THE [REDACTED] SHE [REDACTED]

21 [REDACTED]
22 INCIDENTALLY, SHE WAS [REDACTED] WHO [REDACTED]

23 [REDACTED] FROM HIS [REDACTED]
24 [REDACTED]

25 THE COURT: HER FIRST HUSBAND?

1 PROSPECTIVE JUROR: YES.

2 THE COURT: INTERESTING.

3 MR. [REDACTED] IS TALKING ABOUT THE CASE THAT
4 PROBABLY ALL OF US KNOW FROM TV, THE MIRANDA DECISION, WHERE
5 YOU HAVE TO TELL THE SUSPECTS BEFORE YOU QUESTION THEM "YOU
6 HAVE A RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN AND WILL
7 BE HELD AGAINST YOU IN A COURT OF LAW."

8 HE WAS THE LAWYER FOR ERNESTO MIRANDA, HUH?

9 PROSPECTIVE JUROR: THAT WAS AN ACLU CASE.

10 WHEN [REDACTED]
11 [REDACTED]

12 THE COURT: HE GOT KILLED IN A BAR FIGHT IN PHOENIX
13 YEARS AFTER HE WAS VINDICATED.

14 PROSPECTIVE JUROR: THAT'S RIGHT. WHEN THE POLICE
15 CAME TO ARREST THE SUSPECT, THEY KNEW THEY HAD TO READ
16 SOMETHING TO HIM. THEY WEREN'T SURE WHAT. AND THE OTHER
17 POLICEMAN WHO WAS LOOKING THROUGH THE VICTIM'S -- MIRANDA'S
18 WALLET SAID, "LOOK HERE. I FOUND SOMETHING. I THINK THIS IS
19 IT." SO THE GUY WHO KILLED MIRANDA WAS READ HIS MIRANDA
20 RIGHTS FROM WHAT WAS IN MIRANDA'S WALLET.

21 THE COURT: AMONG THE MEMORABILIA THAT [REDACTED]
22 DID HE ACTUALLY AUTOGRAPH ANY OF THOSE CARDS?

23 PROSPECTIVE JUROR: I DIDN'T GO THROUGH IT. IT WAS
24 BOXES AND BOXES OF PAPERS.

25 THE COURT: I WOULD IMAGINE IN THIS DAY, THAT WOULD

1 BE SOMETHING THAT COULD FETCH MONEY ON EBAY.

2 PROSPECTIVE JUROR: THAT WAS PRE-EBAY.

3 I HAD [REDACTED] NATURAL CHILDREN, TWO OF WHOM ARE ALIVE.

4 ONE IS A [REDACTED], AND THE OTHER HAS A [REDACTED]

5 ONE OF MY CHILDREN WHO DIED WAS A LITIGATION ATTORNEY IN

6 [REDACTED] I HAVE [REDACTED] STEPCHILDREN. ONE IS A CRIMINAL

7 DEFENSE LAWYER IN [REDACTED] COUNTY, AND THE OTHER IS AN

8 [REDACTED] I WAS SEATED AS A CRIMINAL JUROR IN SUPERIOR

9 COURT. WE ACQUITTED. AND I CERTAINLY CAN BE FAIR.

10 THE COURT: THANK YOU, [REDACTED] I APPRECIATE
11 YOUR ANSWERS.

12 [REDACTED]
13 PROSPECTIVE JUROR: MY NAME IS [REDACTED] I GO

14 BY [REDACTED] AFTER A TWO-YEAR MISSION FOR MY CHURCH, I WAS

15 FORTUNATE TO MARRY MY CHILDHOOD SWEETHEART. WE'VE BEEN

16 MARRIED FOR [REDACTED] YEARS. SHE'S A DOMESTIC GODDESS. WE HAVE [REDACTED]

17 CHILDREN. WE HAVE ONE [REDACTED] OUR [REDACTED] OLDER ARE MARRIED. OUR

18 [REDACTED] IS A STUDENT. OUR OTHER CHILDREN, ONE IS IN

19 [REDACTED] THE OTHER IS THE [REDACTED] WITH

20 [REDACTED] AS FAR AS MY LIVING, I'M AN ARCHITECT.

21 I'M [REDACTED] WE SPECIALIZE IN

22 [REDACTED] GENERALLY MORE TOWARDS INSTITUTIONAL WORK. WE DO

23 LIBRARIES FOR THE CITY OF [REDACTED] AND

24 [REDACTED] I HAVE EXPERIENCE IN TERMS OF TRIAL, BUT IT'S

25 LIMITED TO EXPERT WITNESS PRIMARILY ON ZONING ISSUES AND

1 CONSTRUCTION DEFECT. I'VE PROBABLY BEEN INVOLVED IN SOMEWHERE
2 BETWEEN 13 AND 15 OF THOSE KINDS OF CASES. YOUR HONOR, I WILL
3 BE FAIR.

4 THE COURT: THANK YOU VERY MUCH, [REDACTED] I
5 APPRECIATE YOUR ANSWERS.

6 [REDACTED]
7 PROSPECTIVE JUROR: MY NAME IS [REDACTED]. I
8 LIVE IN [REDACTED]. I'M A REALTOR, AND MY HUSBAND IS A
9 [REDACTED] WE HAVE ONE [REDACTED] WHO IS [REDACTED]. I HAVE HAD
10 NO EXPERIENCE WITH BEING A JUROR. I CAN BE FAIR.

11 THE COURT: THANK YOU, [REDACTED]
12 ONCE AGAIN, I HAVE TO MAKE A DETERMINATION HERE OF
13 WHO MIGHT BE THE FOREPERSON AND DEPUTY FOREPERSON.

14 [REDACTED] HOW ABOUT YOU? ARE YOU UP TO THE
15 TASK OF SERVING AS THE FOREPERSON? LET ME TELL YOU ABOUT THE
16 ROLE OF A FOREPERSON.

17 PROSPECTIVE JUROR: I HAD [REDACTED]
18 AGO. I'M DOING FINE, BUT SOME DAYS --

19 THE COURT: I'M GOING TO APPOINT A DEPUTY
20 FOREPERSON, TOO. LET ME TELL YOU WHAT THE FUNCTION IS.

21 IT USED TO BE WHEN THE GRAND JURY DECIDED ON A GROUP
22 OF CASES AND DECIDED TO RETURN INDICTMENTS IN CASES, THE
23 ENTIRE GRAND JURY WOULD HAVE TO COME DOWN AND AFFIRM THAT
24 "THESE ARE OUR DECISIONS." A FEW YEARS AGO, FIVE, SIX, SEVEN
25 YEARS AGO, CONGRESS PASSED A LAW THAT SAID, "WE'LL ALLOW THE

1 FOREPERSON OF THE GRAND JURY TO COME DOWN AND REPRESENT TO THE
2 COURT THE RESULTS OF GRAND JURY BALLOTING"

3 SO TYPICALLY, AS YOU HEARD ME MENTION, ONCE THE
4 GRAND JURY SESSION IS THROUGH FOR THE DAY, THE GRAND JURY
5 FOREPERSON OR DEPUTY FOREPERSON WILL COME DOWN AND ATTEST TO
6 THE COURT ALONG WITH THE APPROPRIATE PAPERWORK THE RESULTS OF
7 GRAND JURY'S WORK FOR THE DAY. THAT WOULD BE ABOUT IT.

8 THE OTHER THING IS THE U.S. ATTORNEY WOULD LOOK TO
9 YOU TO HELP SCHEDULE SESSIONS WITH THE GRAND JURY, TO GET A
10 CONSENSUS AMONG GRAND JURORS ABOUT BREAKS OR HOW LONG YOU WANT
11 TO GO, THAT TYPE OF THING. I DON'T WANT TO SAY IT'S NOT
12 IMPORTANT, BUT IT'S NOT GOING TO TAX YOUR RESOURCES MUCH MORE,
13 I DON'T THINK, THAN JUST SIMPLY SERVING AS A GRAND JUROR.
14 THERE IS A LITTLE MORE INVOLVED, AND YOU HAVE A TITLE.

15 PROSPECTIVE JUROR: I'D RATHER BE THE DEPUTY.

16 THE COURT: WELL, THEN, LET'S SWITCH PLACES.

17 [REDACTED] I WAS GOING TO CALL UPON YOU TO SEE IF
18 YOU'D BE INTERESTED IN BEING A DEPUTY. [REDACTED] WOULD
19 DEFER TO YOU AS THE FOREPERSON.

20 ARE YOU WILLING TO TAKE THAT ASSIGNMENT?

21 PROSPECTIVE JUROR: I WOULD BE.

22 THE COURT: I'LL APPOINT [REDACTED] AS THE FOREPERSON
23 OF THE GRAND JURY AND [REDACTED] AS THE DEPUTY FOREPERSON.

24 NOW, I MENTIONED THE POSSIBILITY THAT THERE MIGHT BE
25 PEOPLE THAT WANTED TO SWITCH BETWEEN THURSDAY AND FRIDAY.

1 PANELS. I'VE BEEN INFORMED THAT ONE OF THE GRAND JURORS FROM
2 THE FIRST PANEL, THE WEDNESDAY PANEL, WOULD PREFER TO SIT ON
3 THURSDAYS.

4 IS THERE ANYONE ON THIS THURSDAY PANEL -- OKAY. ALL
5 RIGHT.

6 LET ME TAKE FIRST THINGS FIRST.

7 TURNING MY ATTENTION BACK TO THE WEDNESDAY PANEL,
8 WHO IS IT THAT WOULD PREFER -- [REDACTED]?

9 I'M GOING TO TRY TO GET YOU IN ORDER.

10 [REDACTED] SPOKE UP FIRST.

11 [REDACTED], [REDACTED], [REDACTED]

12 LET ME SEE IF I HAVE FOUR SIMILARLY SITUATED PEOPLE
13 ON THURSDAY THAT WANT TO GO TO WEDNESDAY.

14 MR. COOPER, I'M GOING TO SWITCH YOU WITH

15 [REDACTED]

16 [REDACTED], I'LL SWITCH YOU WITH [REDACTED]

17 [REDACTED], I'LL SWITCH YOU WITH [REDACTED]

18 AND [REDACTED] I'LL SWITCH YOU WITH [REDACTED]

19 [REDACTED]

20 IS THERE ANYONE ELSE WHO EITHER WANTS TO SWITCH OR
21 IS INDIFFERENT?

22 [REDACTED] I'LL SWITCH YOU WITH [REDACTED]

23 I LIKE TO BE ACCOMMODATING TO EVERYBODY. AND SEEING
24 NO MORE HANDS, I'M NOT GOING TO MAKE ANY MORE INQUIRIES.

25 [REDACTED] WILL YOU STAND.

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[REDACTED]

I PROPOSE SWITCHING THE TWO OF THEM.

DO YOU WANT THEM TO SWITCH PHYSICALLY RIGHT NOW?

THE CLERK: NO.

THE COURT: [REDACTED] AND [REDACTED] THOSE TWO WILL
SWITCH.

[REDACTED] AND [REDACTED] WILL SWITCH.

[REDACTED] AND [REDACTED] WILL SWITCH.

[REDACTED] ON THE END AND [REDACTED]

WE'LL MAKE THOSE SWITCHES AT THE APPROPRIATE TIME.

LADIES AND GENTLEMEN, THOSE OF YOU WHO HAVE BEEN
SELECTED TO SIT ON THE GRAND JURY, IF YOU'LL STAND AND RAISE
YOUR RIGHT HAND, PLEASE.

--000--

I HEREBY CERTIFY THAT THE TESTIMONY
ADDUCED IN THE FOREGOING MATTER IS
A TRUE RECORD OF SAID PROCEEDINGS.

S/EVA OEMICK

7-3-07

EVA OEMICK
OFFICIAL COURT REPORTER

DATE